83-129
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In the Supreme Court of the United States

OCTOBER TERM, 1983

No.

CLYDE HOLLOWAY, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the district court exceeded its remedial authority in *sua sponte* framing a desegregation decree for Rapides Parish, Louisiana, which closed two small rural communities' only schools, one predominantly black (Lincoln Williams) and one predominantly white (Forest Hill), and ordered the racial mixing of their entire student bodies, kindergarteners included, in another community located 10 miles midway between the closed schools where (1) no factual proof exists and no findings of fact were made by the district court linking the racial composition of Lincoln Williams and Forest Hill Schools to segregative actions on the part of the Rapides Parish School Board; (2) such a decision deprives the small rural towns of Cheneyville and Forest Hill, Louisiana, of their only schools built and maintained at the expense of local taxpayers; and (3) less drastic remedial alternatives were available to the district court.

2. Whether the district court applied the proper legal standard in insisting upon "the greatest amount of integration" as its "sole purpose," to the neglect of countervailing equitable considerations, including the value of a rural community's only school and the demonstrable risk to the safety and educational well-being of five-year-olds in busing them upwards of 30 miles and two hours a day.

3. Whether the district court erred in substituting its own view of the physical condition of the Lecompte schools for the judgment of the Rapides Parish School Board.

PARTIES TO THE PROCEEDING

Clyde Holloway was an intervenor below and is a petitioner here. He represents a class of citizens opposed to the closing of Forest Hill Elementary School, which is in Rapides Parish, Louisiana. Virgie Lee Valley and others represent a class of black citizens of Rapides Parish; they were plaintiffs below and are respondents herein. The Rapides Parish School Board, its individual members, and the Superintendent of Schools, Mr. E. Allen Nichols, were defendants below; they seek certiorari here in a companion petition. The United States of America was a plaintiff-intervenor below and is, presumably, a respondent herein.

INDEX

INDEX (Continued)

INDEX (Continued)

INDEX (Continued)

TABLE OF AUTHORITIES

CASES: *Page*

TABLE OF AUTHORITIES (Continued)

Page

TABLE OF AUTHORITIES (Continued)

TABLE OF AUTHORITIES

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Petitioners, Clyde Holloway, et al., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this matter on March 30, 1983.

OPINIONS BELOW

The March 30, 1983 opinion of the Court of Appeals is reported at 702 F.2d 1221 and is reprinted in the separate Appendix to this Petition, pp. 1a-21a. The May 18, 1981 opinion of the Court of Appeals, reversing the District Court and remanding, is reported at 646 F.2d 925 (App., *infra*, 42a-75a). The District Court's Preliminary Opinion of June 6, 1980 is unreported (App., *infra*, 95a-98a). The District Court's August 6, 1980 opinion is reported at 499 F.Supp. 490 (App., *infra*, 82a-94a). The District Court's July 22, 1981 opinion on remand is unreported (App., *infra*, 27a-40a).

JURISDICTION

The judgment of the Court of Appeals was entered March 30, 1983. Forest Hill Intervenors' petition for rehearing and rehearing en banc was denied on April 29, 1983 (App., *infra*, 24a-25a). Rapides Parish School Board's petition for rehearing and rehearing en banc was denied on May 26, 1983 (App., *infra*, 26a). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution.

STATEMENT OF THE CASE

1. Introduction

This is a petition by the people of Forest Hill, Louisiana, complaining of the loss of Forest Hill Elementary School, the only school in a small rural community located in Rapides Parish, Louisiana. Petitioners are here seeking review of a split decision of the United States Court of appeals for the Fifth Circuit, which affirmed Judge Scott's decision to close Forest Hill School. An earlier three-judge panel of the Fifth Circuit had unanimously reversed Judge Scott's order closing Forest Hill School and remanded for reconsideration.

2. The Proceedings through July 3, 1980, terminating in Judge Scott's *sua sponte* decision to close Forest Hill School

Forest Hill's petition stems from the district court's response to a motion for supplemental relief filed by the private plaintiffs in 1979. The motion complained of the continued existence of one-race schools in Wards 1, 8, and 9 of Rapides Parish, which

encompass the cities of Alexandria and Pineville. Forest Hill is an incorporated village located in Ward 4, a rural area of the Parish, some 20 miles from Alexandria.[1] Forest Hill Elementary School is the only school in School District 16. It is a modern physical facility consisting of sixteen classrooms, a library, a cafeteria, and a gymnasium, all of which are air-conditioned. The School is situated on ten acres of public property, which include two athletic fields, one of which is equipped with lighting.[2] The citizens of Forest Hill built their first school in 1901. They have maintained a school in Forest Hill ever since by virtue of a separate bonding district and at the expense of the Community's taxpayers.[3]

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[1] Rapides Parish is 1,369 square miles in total area, roughly 40 miles wide and 35 miles long. STATE OF LOUISIANA, GEOLOGICAL SURVEY, WATER RESOURCES BULL. No. 8 (April 1966), p. 4. This case thus involves an area larger than the State of Rhode Island and two and a half times the size of the area in the *Swann* case, which the Chief Justice described as "large" (402 U.S. at 6). A schematic depiction of Rapides Parish, showing the wards in question, appears *infra*, Appendix A, 75a. A map of Rapides Parish, showing the school taxing districts in question, appears *infra*, Appendix Q, 108a.

[2] Response of Rapides Parish School Board to Court's Preliminary Opinion of June 6, 1980 and Order of July 3, 1980 Suggesting a Proposed Plan of Desegregation for Rapides Parish, July 28, 1980 [hereinafter referred to as Board Response], p. 8. Excerpts from the Board Response appear *infra*, Appendix N, 100a.

[3] Forest Hill School started out as a small wooden frame building. In 1911 the Community built a completely new two-story red-brick building. In 1952 the present structure was built, and it was completely renovated in 1966, with the addition of a carpeted library and air-conditioning throughout the buildings. Over the years, a total of $430,000 in assessed millage has been expended by the citizens of Forest Hill in support of their public school.

Most recently, one day after the Fifth Circuit denied rehearing en banc, on April 30, 1983, the citizens of Forest Hill voted to treble their tax assessment to a total of 6 mills for continued maintenance of Forest Hill Elementary School, notwithstanding the fact that the School has been legally dead for three years. This millage will produce an annual revenue of $60,000 for maintenance of Forest Hill School should this Court see fit to save it.

The idea to close Forest Hill Elementary School was Judge Scott's alone, conceived *ex parte* in chambers and announced to the parties in a plan handed down by the trial court on July 3, 1980. Neither the private plaintiffs nor the United States Government as intervenor had ever proposed closing Forest Hill Elementary School as a possible remedy in the Rapides Parish desegregation case. In fashioning his own desegregation plan involving wards and schools outside the scope of the evidence adduced at the April 29, 1980 hearing, Judge Scott not only rejected the plan of the United States Government's expert witness, Dr. Gordon Foster, but announced to the parties that he would draw up the plan himself, saying: "I also feel that I am the best expert that I know and I intend to draw this plan myself." Preliminary Opinion, June 6, 1980, Exhibit A, p. 1 (App., *infra*, 97a).[4]

Judge Scott's plan of July 3, 1980 ordered Lincoln Williams School closed because, as Judge Scott explained in his opinion

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[4] Judge Scott's tentative plan, issued on July 3, 1980, closed Tioga Junior High School — "an excellent physical plant" according to the School Board's response to Judge Scott's plan. Board response, p. 7. Judge Scott later recanted this decision, saying (App., *infra*, 92a): "Our original plan had the very objectionable feature of closing Tioga Junior High School, making the role of that single community far more burdensome than the other junior high schools in the metropolitan area." Judge Scott's tentative plan of July 3, 1980 closed the Poland High School, which caused the Board to say (Board Response, p. 9): "With respect to the Poland area, it must be pointed out that the Court's proposal also requires abandonment of an excellent facility in which the Board has a substantial financial investment. The school, serving grades K-12, is worth approximately $3,000,000.00 and is completely air-conditioned." It was the School Board's view that "closing and abandoning Poland High School as suggested by this Court's proposal is totally unsound from both an educational and an administrative viewpoint." Board Response, p. 9. Judge Scott agreed. Just as he had ordered Tioga Junior High reopened, Judge Scott reopened Poland, making it a K-6 school and assigning to it black students in those same grades from Lincoln Williams School, located in Cheneyville, Louisiana, some 12.6 miles away.

of August 6, 1980 (App., *infra*, 87a): "[T]here is no concentration of white students available in the Cheneyville area to integrate Lincoln Williams Elementary (92.2% black). Consequently Lincoln Williams (K-8) must be closed and its student body assigned to other schools in the Lecompte area." Next, in order to increase the number of whites attending schools in Lecompte, Judge Scott proceeded to close Forest Hill Elementary School and he ordered the entire K-8 student population at Forest Hill to be bused to Lecompte, some ten miles distant from Forest Hill School.[5]

3. The School Board's Response to Judge Scott's Decision To Close Forest Hill School

At an emergency School Board meeting[6] held on July 22, 1980, the Rapides Parish School Board adopted Board member Jo Ann Kellogg's motion urging Judge Scott to reconsider his plan "on account of physical conditions which would jeopardize sound educational programming, particularly as related to

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[5] The panel majority put the distance between Forest Hill and Lecompte as "approximately nine miles" (App., *infra*, 9a). The district court found the distance to be 9.7 miles (App., *infra*, 29a), which adds almost two miles extra a day round-trip. And there is uncontested record testimony showing that the young K-3 children are bused 2.2 miles and twenty-five minutes within the city limits of Lecompte before starting the return trip home. See note 7, *infra*. A map showing the bus routes for 1979-80 elementary schools, prior to the closing of Forest Hill and Lincoln Williams Schools, appears *infra*, Appendix R, 109a.

[6] Through their attorney the people of Forest Hill filed a petition for intervention in this case on August 1, 1980. This petition sought to contest Judge Scott's *ex parte* decision to close Forest Hill School and prayed for an opportunity to adduce record evidence showing the factual assumptions of Judge Scott's July 3, 1980 opinion regarding the location of Forest Hill students and the distances they would have to be bused under Judge Scott's plan to be in error. Judge Scott, however, denied Forest Hill's intervention petition the same day it was filed and he then cancelled the formal hearing scheduled for August 1, 1980 because, according to Judge Scott, "no new evidence existed." Order, August 11, 1980, p. 3.

Group 5 — Forest Hill, Lincoln Williams, Poland, Lecompte, C.C. Raymond, and Rapides High . . . ." Board Response, p. 5. Mrs. Kellogg urged the reopening of Forest Hill School as a K-3 school serving both the Forest Hill and the Lecompte areas. She also suggested that Lecompte Elementary School be closed because of its age and condition and that its student population be bused to Forest Hill for grades K-3. See Board Response, Exhibit G, p. 1. With respect to the physical conditions at Lecompte Elementary and Carter C. Raymond, Board member Kellogg stated (Board Response, Exhibit G, p. 2) (App., *infra*, 106a):

> "The campuses at Lecompte Elementary and Carter C. Raymond are located in a highly congested area within 1/2 block of each other. There presently exists problems with bus loading and unloading, staff parking, public access not only to the schools but to the residences surrounding the schools. These facilities are surrounded by very narrow streets. The addition of the volume of students to be added to these facilities would compound these problems immeasurably and create additional problems of safety both to the citizens of the community and the students and staff of the school facilities. These problems do not exist in the schools outside the Lecompte area."

Board member Charles Holloway in his response to Judge Scott's proposed plan stated in part (Board Response, Exhibit E, p. 1): (App., *infra*, 103a): "The safety factor *alone* should convince the Court to reconsider its proposed plan. The one-story structure at Forest Hill is far superior to the three-story structure of Lecompte Elementary."

4. Judge Scott's final order and opinion of August 6, 1980

On August 6, Judge Scott entered a final order closing both Lincoln Williams and Forest Hill Elementary Schools. In its opinion, the trial court stated (App., *infra*, 89a):

> "This plan achieves our sole purpose, the greatest amount of integration with a reasonably assured prospect of success."

On August 27, 1980 a hearing was held on the School Board's motion to modify the trial court's desegregation plan. The Board objected to closing "good, usable school facilities" (Tr. August 27, 1980 Proceedings, p. 6) and to busing "in some instances, busing kids forty miles, not just right next door." (Tr. August 27, 1980 Proceedings, p. 27). The trial court denied the Board's motion to modify, saying (Tr. August 27, 1980 Proceedings, pp. 34-35):

> "My task here is to accomplish that integration, the required integration, and what we are talking about is racially black identifiable schools. That is the name of the game. . . . And the logistical expense I feel is not something that this Court can take any notice of. It is merely logistical expense against a constitutional right, it is just that simple."

5. The Fifth Circuit's decision in *Forest Hill I*

On May 18, 1981, a unanimous panel of the Fifth Circuit Court of Appeals reversed Judge Scott's decision closing Lincoln Williams and Forest Hill Elementary Schools. The Fifth Circuit found no adequate justification supported in the record on which to approve the closing of Forest Hill and Lincoln Williams Schools. The judgment of the district court was reversed and the matter was remanded to Judge Scott.

6. The proceedings on remand

On remand, Judge Scott *sua sponte* reversed his earlier decision denying the Forest Hill intervention and allowed Mr. Roy, representing the people of Forest Hill, to participate in the ordered re-examination of specific desegregation measures for southeastern Rapides Parish. The private plaintiffs, the

United States Government, the School Board, and the Forest Hill intervenors all participated in an evidentiary hearing held on June 30, 1981 to consider alternatives to Judge Scott's plan. The School Board proposed closing one of the Lecompte schools. According to data worked up by School Board officials, under this alternative Forest Hill would have forty percent black, Lecompte would be fifty-four percent black, Poland thirty-eight percent black, and Lincoln Williams would be forty-eight percent black. Tr. June 30, 1981 Proceedings, p. 20. The private plaintiffs submitted a plan that re-opened Forest Hill as a K-5 school and Lincoln Williams as a sixth grade center, with children coming to the latter from Forest Hill, Cheneyville, Poland, and Lecompte. Tr. June 30, 1981, Proceedings, p. 8. Other less drastic alternatives were submitted on remand, including a proposal supported by private plaintiffs, the School Board, and Forest Hill intervenors to allow both Cheneyville and Forest Hill, Louisiana, to keep their young children in grades K-3 at home in their own community.

7. Forest Hill's evidence on remand

Mr. Parks W. Sansing, an employee of the Rapides Parish School Board, was called as an expert witness by the Forest Hill intervenors in connection with Forest Hill Exhibit 13, a map showing student pick-ups and the distances travelled by the various bus drivers in the Forest Hill district. Mr. Sansing testified that the map he prepared shows that only 3 of 311 former Forest Hill Elementary School students live closer to Lecompte than to Forest Hill. Tr. June 30, 1981 Proceedings, p. 53. The evidence adduced by Mr. Sansing, including Forest Hill 13, shows that under Judge Scott's plan a total of 181 students must be bused past Forest Hill Elementary School and then on to Lecompte, adding another 25 miles and approximately 60

minutes busing time a day.[7] Mr. Roy for Forest Hill attempted to put into evidence the testimony of bus drivers familiar with the difficulties of traveling from Forest Hill to the Lecompte schools, but Judge Scott excluded this testimony as irrelevant. Tr. June 30, 1981 Proceedings, p. 56. In response, Mr. Roy made an offer of proof stating (*id.* at 70): "And if the bus drivers were called . . . they would testify that they have had — they recalled accidents on the bus where the little kindergarten kids, one would fall asleep, fall on the floor, and ruin their pants, and that is what they would testify to." The last witness for Forest Hill was Dr. Jack Wright, Jr., a rural sociologist with a Ph.D. in sociology from Louisiana State University. Dr. Wright testified regarding the importance of Forest Hill School to the community.[8] No other parties put on any evidence at the

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[7] A copy of Forest Hill Exhibit 13 appears *infra*, App. S, 110a. Contrary to the intimation of the panel majority (App., *infra*, 13a n.10), this map pertains only to former Forest Hill Elementary School students. As explained by Mr. Sansing: "I used the trip sheets of the last school year Forest Hill was in session, and from that trip sheet took a master map, placed each bus driver's stop and the number of students that he picked up at each stop in School District 16, concerning Forest Hill Elementary School, Grades K through 8." Tr. June 30, 1981 Proceedings, p. 51. Mr. Sansing also testified, with respect to kindergarteners through third-graders, that these pupils are bused under Judge Scott's plan a total of 2.2 miles, consuming approximately twenty to twenty-five minutes, and twice crossing railroad tracks paralleling Louisiana Highway 71, a busy four-lane thoroughfare, without ever having so much as left the city limits of Lecompte as buses move from Lecompte Elementary to Carter C. Raymond and thence to Rapides High School before beginning the trip back to Forest Hill. Tr. June 30, 1981 Proceedings, p. 57.

[8] "[I]t is organized around that school. It is the one thing which they have in common, and there is the raison d'etre to the community, without which nothing, or it is how they come together to affirm their oneness as a community. . . . And that is why they are so cohesive in their desire to keep it, because it represents their way of life." Tr. June 30, 1981 Proceedings, pp. 75-76. Compare the plea of the Cheneyville Concerned Citizens Group:

> "It is our prayer that the Lincoln Williams Elementary and the Forest Hill Elementary schools be reopened. The school is the only source of

hearing on June 30th, nor did the other litigants question Forest Hill's evidence in any way.[9]

8. Judge Scott's decision on remand

Judge Scott was unpersuaded by any of the evidence adduced at the hearing on June 30; nor was he satisfied with any of the alternative plans submitted by private plaintiffs, the School Board, and the Forest Hill intervenors. In an opinion handed down on July 22, 1981, Judge Scott adhered to his earlier decision closing both Lincoln Williams and Forest Hill Schools. Once again, Forest Hill took its case to the Fifth Circuit Court of Appeals.

9. The Fifth Circuit's decision in *Forest Hill II*

On Forest Hill's second appeal, the Fifth Circuit split 2 to 1, affirming the decision to close both Lincoln Williams and Forest Hill Schools. Citing language from this Court's opinion in *Swann*, the majority reasoned (App., *infra*, 6a) that even "bizarre" plans are constitutional, and that there is no exception that would allow a court to save a rural community's only school. All grades must be bused, said the majority, citing this Court's recent denial of certiorari in the Nashville school case, *Kelley* v. *Nashville Metropolitan County Board of Education*, 687 F.2d 814 (6th Cir. 1982), *cert. denied* 459 U.S. ____ (1983).

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recreation and is the community center for our community. What is a community without a church and a school?"

R I, p. 3 ["R" refers to the Record on Appeal when this case reached the Fifth Circuit the second time; "I" is the Volume no.].

[9] At the conclusion of the hearing, Mr. Berry, counsel for the private plaintiffs, told Judge Scott (Tr. June 30, 1981 Proceedings, pp. 89, 90):

> "In behalf of private plaintiffs, I would like to make this statement that private plaintiffs are not — do not desire to have any school closed up, if we can possibly keep them open. . . . I want to make that crystal clear so that no one in the community would believe that private plaintiffs are attempting to close down any school."

The majority did not mention the fact that the trial court had allowed three all-black K-2 neighborhood schools to remain intact in Alexandria. This exception was deleted from the majority's recitation of facts by the use of an ellipsis (App., *infra*, 3a). The majority conceded that the trial court's plan did involve excessive busing for some of Forest Hill's children (App., *infra*, 13a-14a n.10). Nevertheless, the majority affirmed. Chief Judge Clark, in dissent, did not think equity so draconian.

REASONS FOR GRANTING THE WRIT

Introduction

This case raises grave questions regarding the exercise of, and the limits to, federal judicial power in desegregation cases. No opinion of this Court suggests federal judges can close good schools against the wishes of the school board where less drastic remedial alternatives are available. The decision below not only usurps local control of education, but it plainly carries federal courts into realms of policy and plant management better left to local school officials. Nothing in *Brown II* or *Swann* requires the reciprocal destruction of black and white schools and the busing of five-year-olds upwards of 40 miles and two hours a day. The decision of the Fifth Circuit panel majority adopts far too rigid an interpretation of *Swann*, and the district court's decision is likewise tainted by a single-mindedness of purpose and a logical extremism[10] wholly out of line with the equitable teachings of *Swann*. The approach of the district court and the panel majority is in conflict with the decisions of six other Circuit Courts of Appeals, which rightly leave questions regarding utilization of school facilities to the

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[10] The words of Holmes, if we may borrow them, are a telling reply to the absolutism of the trial court and the panel majority below. Holmes's thinking

sound discretion of local school boards. To the extent the decision below requires the busing of five-year-olds two hours a day, it is in conflict with this Court's decision in *Swann* and with an en banc decision of the Fourth Circuit Court of Appeals. Lower courts, we submit, are sorely in need of guidance regarding the proper interpretation of *Swann*, particularly as it affects elementary-age children. See *Austin Independent School District* v. *United States*, 429 U.S. 990, 991 (1976) (Powell, J. concurring). A ruling that destroys a rural community's only school and drives its children, both black and white, out of their public school and into a Baptist church for their schooling imperatively calls for corrective review by this Court.

I.

THE TRIAL COURT AND THE PANEL MAJORITY ERRED IN ESTABLISHING AS THEIR "ONE ALL-ENCOMPASSING PURPOSE: THE ADOPTION OF A PLAN WHICH ACHIEVES THE GREATEST AMOUNT OF INTEGRATION" (499 F.Supp. at 491). THIS WAS WRONG. INTEGRATION FOR INTEGRATION'S SAKE IS NOT A CONSTITUTIONAL REQUIREMENT.

Dismantling a dual school system, this Court has said, "does not require any particular racial balance in each 'school, grade, or classroom.' " *Milliken* v. *Bradley*, 418 U.S. 717, 740-41 (1974). The trial court's salt and pepper theory of the case (Tr. Jan. 15, 1981 Proceedings, p. 45):

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is our answer to those who would kill a school in order to desegregate it:

> "All rights tend to declare themselves absolute to their logical extreme. Yet all are in fact limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached."

Hudson Water Co. v. *McCarter*, 209 U.S. 349, 355 (1908).

> "You have to have in the schools white and black children alike . . . so some whites have to go to schools that were formerly black, located in black communities, and some blacks have to go to the white community,"

is contradicted by higher authority. *Swann* v. *Board of Education*, 402 U.S. 1, 26 (1971); *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406, 417 (1977). Integration for integration's sake is not, as the trial court expressed it (Tr. Jan. 15, 1981 Proceedings, p. 45), "the name of the game."

II.

THE TRIAL COURT AND THE PANEL MAJORITY ERRED IN IMPOSING A REMEDY BEYOND THE SCOPE OF THE VIOLATION CONTRARY TO THE REASONING OF *MILLIKEN* v. *BRADLEY*.

A. Nothing in the Remedial Principles of *Brown II* or *Swann* Sanctions the Theory Espoused by the Trial Court and Affirmed by the Panel Majority of the Reciprocal Destruction of Black and White Schools for Purposes of Integration.

The Fifth Circuit, in its first panel opinion in this case, said (App., *infra*, 65a): "As far as we can determine, the only justification for closing Lincoln Williams was its predominance of black pupils." Obviously the members of the panel in *Forest Hill I* wanted to know why Judge Scott had closed Lincoln Williams School. On remand Judge Scott made it crystal clear (App., *infra*, 29a) that he closed Lincoln Williams because he feared whites would not attend it. We submit that if the School Board had suggested closing Lincoln Williams because of a fear of white flight, this Court would not hesitate to declare such action in violation of the Equal Protection Clause of the Fourteenth Amendment. *United States* v. *Scotland Neck Bd. of Educ.*, 407 U.S. 484, 491 (1972). Yet it is plain from his own

words that Judge Scott did exactly the same thing when he closed Lincoln Williams School. Hence we say that the trial court's decision to close Lincoln Williams for fear that whites would not attend it which, in turn, led to the reciprocal demise of Forest Hill School, deprives black students at Lincoln Williams and white students at Forest Hill of equal protection of the law. *Accord*, *United States* v. *Texas Education Agency*, 467 F.2d 848, 871-72 (5th Cir. 1972) (en banc) (Wisdom, J.) (district court's fear of "white flight" unacceptable as basis for closing black school). Judge Scott's expert plan thus got off to a grotesque start. Nothing in the remedial principles of *Brown II* or *Swann* allows a federal judge to ignore the commands of the Fifth Amendment while purporting to remedy a violation of the Fourteenth Amendment. Judge Scott's principle of reciprocal destruction of good schools (App., *infra*, 32a):

> "It was not fair to the black community nor legally proper that only identifiably black schools be closed for purposes of integration,"

is unwarranted in law and contrary to the reasoning of the elder Mr. Justice Harlan in *Cumming* v. *Board of Education*, 175 U.S. 528 (1899).[11] The same kind of practical wisdom continues to shape this Court's thinking about how far equitable remedial

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[11] In the *Cumming* case, Justice Harlan stopped short of requiring the reciprocal destruction of black and white schools in the name of equal protection, saying (175 U.S. at 544):

> "The substantial relief asked for is an injunction that would either impair the efficiency of the high school provided for white children or compel the Board to close it. But if that were done, the result would only be to take from white children educational privileges enjoyed by them, without giving to colored children additional opportunities for the education furnished in high schools. The colored school children of the country would not be advanced in the matter of their education by a decree compelling the defendant Board to cease giving support to a high school for white children."

power extends in school desegregation cases. *Swann*, *supra*; *Milliken* v. *Bradley*, 418 U.S. 729 (1974). To put it in the simplest terms, the district court's doctrinaire approach goes too far. Nothing in the cases cited by the panel majority, nor in the *equitable* remedial principles of *Brown II* or *Swann*, authorizes a federal judge who closes a black school for fear whites will not attend it, to close a good white school by way of *quid pro quo*. Such a result wastes thousands of tax dollars, deprives both blacks and whites at Lincoln Williams and Forest Hill of their only schools, and is plainly punitive in nature.[12]

We submit that the reasoning of *Milliken* v. *Bradley*, 418 U.S. 729, 745 (1974), which delineates the permissible scope of remedial authority in desegregation cases, governs here and mandates reversal.[13] True, this case does not involve separate school districts as in *Milliken*. But separate wards and separate bonding districts are involved. According to Superintendent Nichols's testimony (Tr. April 29, 1980 Proceedings, p. 128): "[Y]ou have two different bonding districts there. Forest Hill is the School District Number 16, they have their own bond, they built that school."

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[12] Contrary to the suggestion of the panel majority (App., *infra*, 9a n.7), nothing in *Morgan* v. *McDonough*, 689 F.2d 265 (1st Cir. 1982), or in *Mitchell* v. *McCunney*, 651 F.2d 183 (3d Cir. 1981), supports the bizarre result reached in this case. In *Morgan* the district court was only following the wishes "of *all* parties" (689 F.2d at 273) (emphasis in original) in ordering Richards Elementary School closed. What is even more telling, the trial court in *Morgan* reversed itself and ordered Conley Elementary School reopened when Boston school officials objected. *Id.* Likewise in *Mitchell* the facts show that the district court was acting only at the behest of the school board in closing the schools in question. See 651 F.2d at 186.

[13] Surely the element of surprise is the same. As far back as 1970 the Fifth Circuit itself treated the legal issues in the Rapides Parish School desegregation case on a ward by ward basis, ruling that further relief was necessary in only wards 1 and 8. *Valley* v. *Rapides Parish School Board*, 434 F.2d 144 (5th Cir. 1970).

B. Nothing in the Record or in the Trial Court's Opinions in This Case Links the Post-1970 Change in the Racial Mix of the Lecompte Area Schools to Segregative Actions Chargeable to the Rapides Parish School Board. This Failure of Proof Is Fatal.

Judge Scott's unexplained conclusion in his Preliminary Opinion of June 6, 1980 (App., *infra*, 95a) that "the Rapides Parish School system is not unitary and that additional relief must be granted" is left wholly unelaborated in his final opinion of August 6, 1980.[14] While there is no doubt that federal courts have authority to grant appropriate relief when constitutional violations on the part of school officials are proved, this Court's cases

> "have just as firmly recognized that local autonomy of school districts is a vital national tradition. *Milliken* v. *Bradley*, 418 U.S. 717, 741-742 (1974); *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 50 (1973); *Wright* v. *Council of City of Emporia*, *supra* [407 U.S. 451 (1972)], at 469. It is for this reason that the case for displacement of the local authorities by a federal court in a school desegregation case must be satisfactorily established by factual proof and justified by a reasoned statement of legal principles. Cf. *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976)."

Dayton Board of Education v. *Brinkman*, 433 U.S. 406, 410 (1977). *Accord*, *Austin Independent School District* v. *United*

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[14] It is quite revealing — and most distressing — that at the outset of the April 29, 1980 hearing, when this matter got started some three years ago, Judge Scott admitted on the record: "I don't know what a unitary system is from the point of view of specifics." Tr. April 29, 1980 Proceeding, p. 32. This is not to blame the trial court. It is only to emphasize the need for further guidance from this Court, lest other communities lose their schools by judicial decree. It has happened again. See *Davis* v. *East Baton Rouge Parish School Board*, 514 F.Supp. 869 (M.D. La. 1981), *appeal pending*.

States, 429 U.S. 990 (1976). The trial court's opinions in this case fail on their face to meet these requirements, a failure of proof which plainly bothered the panel in *Forest Hill I*, and rightly so. Contrariwise, the majority in *Forest Hill II* leap over what is a glaring failure of proof, paying only lip service to this Court's holding in *Dayton I*. Furthermore, the record is barren of any evidence linking the high proportion of blacks at Lincoln Williams to segregative actions on the part of the School Board. All schools in Ward 3 were desegregated thirteen years ago by Judge Hunter's decree. The Fifth Circuit affirmed, declaring the schools in Wards 3 and 4, after implementation of Judge Hunter's plan, in compliance with the law. *Valley* v. *Rapides Parish School Board*, 434 F.2d 144, 153 (5th Cir. 1970). The post-1970 change in the racial mix of the Lecompte area schools, including Lincoln Williams, has nothing to do with segregative actions on the part of the School Board. This failure of proof is fatal, and Judge Scott plainly exceeded his remedial authority in mixing for mixing's sake.[15]

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[15] It is ironic that 13 years ago a white rural school was left standing in Ward 5 of Natchitoches Parish, Louisiana, and the Fifth Circuit refused to order its pairing with a black school located 12 miles away in the same ward, saying: "Theoretically these schools could be paired. A good look at the map indicates the great distance children would be compelled to travel to effectuate the criss-cross between the two plants." *Robertson* v. *Natchitoches Parish School Board*, 431 F.2d 1111, 1113 (5th Cir. 1970). Natchitoches Parish borders Rapides Parish, and we submit that the common-sense approach of *Robertson*, which "separately examin[es] the city schools (Ward 1) and the rural schools (Wards 2 through 10)" (431 F.2d at 1112) and takes into account the geographical isolation of rural schools in parishes as large as Natchitoches (1,297 square miles) ("This Court, of course, cannot alter geography." 431 F.2d at 1113), should also be applied in assessing the soundness of the district court's plan for Rapides Parish (1,369 square miles), which is larger than Natchitoches Parish and which also has a few one-race schools out in the country. Just how this Rapides case differs legally from the Natchitoches case was left unexplained by the panel majority. Contrariwise,

III.

THE TRIAL COURT'S BLIND INSISTENCE UPON CLOSING FOREST HILL SCHOOL IN THE FACE OF THE EXTREME HARDSHIP TO THE COMMUNITY AND THE RISK TO THE SAFETY OF THE CHILDREN INVOLVED PLAINLY EXCEEDS THE LIMITS OF EQUITABLE DISCRETION SET IN *SWANN*.

A. Closing Good Schools Is Not the Business of Federal Courts. The Trial Court Erred in Substituting Its Own View of the Physical Condition of the Lecompte Schools For the Judgment of the Rapides Parish School Board.

In *Swann*, Chief Justice Burger for a unanimous Court said that the closing of a school is one of "the most important functions of local school authorities and also [one] of the most complex." 402 U.S. at 20. We know of no appellate opinion sustaining a federal judge's decision to close an admittedly excellent school facility as a remedy in a school desegregation case. Judge Scott's decision to close Forest Hill School "for purposes of integration" is wholly unprecedented, and we take the position that, in the circumstances of this case, closing Forest Hill School was beyond the remedial authority of Judge Scott and an abuse of his equitable discretion. We submit that decisions to close schools for purposes of desegregation must be left to local school officials, not to federal judges, and where

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Chief Judge Clark, in his dissent, probed the essentials of this case when he stated (App., *infra*, 18a-19a):

> "The record shows without contradiction that the Forest Hill area became predominantly white because of a change in the community's economic industrial conditions which had nothing to do with schools. *Cf. Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 436 . . . (1967) [*sic*]. Neither the Lincoln Williams nor the Forest Hill school was constructed or maintained to evade desegregation. The school board has never used either school for racial purposes. The punishment of these innocents fits no crime of their or the district's making."

such decisions are not racially motivated, no federal judge has the power to substitute his own view of the premises and to decide which schools he thinks it best to close. The unsafe conditions at Lecompte Elementary were emphasized by both Board members Kellogg and Holloway in their responses to the trial court's plan, but Judge Scott rejected the idea of closing Lecompte Elementary, relying on his own "detailed personal inspection of these schools" (App., *infra*, 31a). But the Fifth Amendment precludes any federal judge from finding adjudicative facts based on personal inspection of the premises in question dehors the record. *Kennedy* v. *Great Atlantic & Pacific Tea Co.*, 551 F.2d 593 (5th Cir. 1977). Where communities stand to lose their only schools there is every reason to enforce the protective mantle of due process.[16] At any rate, we submit that the questions of comparative physical plant raised in this case are for the Rapides Parish School Board, not for Judge Scott. Otherwise federal courts will assume a role wholly beyond their competence and completely outside the scope of relief contemplated by *Brown II* and *Swann*. "Remedial judicial authority," it must be remembered, "does not put judges automatically in the shoes of school authorities whose powers are plenary." *Swann*, 402 U.S. at 16. "Judicial authority enters only when local authority defaults." *Id.* Nothing in this record suggests that Board members Holloway and Kellogg's concerns over the inadequate facilities and the

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[16] In approving Judge Scott's *ex parte* inspections of the Lecompte schools, which Judge Scott twice admits in his July 22, 1981 opinion (App., *infra*, 30a, 31a), the panel majority says (App., *infra*, 14a n.11): "Forest Hill residents do not dispute the [trial] court's findings as to the adequacy of these schools . . . ." But this is plainly mistaken. In our opening brief in *Forest Hill II*, we told the Fifth Circuit (p. 52): "Certainly the comparative physical plants at Lecompte Elementary, Carter C. Raymond, and Forest Hill were adjudicative facts upon which the parties, including Judge Scott, who made himself a witness in this case, were in basic disagreement." We fail to see how

attendant safety problems at Lecompte Elementary were in any way disingenuous or in default of their responsibilities. We know of no opinion of this Court — certainly not *Swann* — that suggests federal judges can close good schools against the wishes of a local school board where less drastic alternatives are available. The approach of the panel majority in this case is in conflict with the decisions of at least six other Circuit Courts of Appeals, which rightly leave utilization of physical plant to the sound discretion of local school boards. The Eighth Circuit has said that: "The matter of utilization of available facilities is within the province and discretion of the school board." *Haney* v. *Sevier County School Board*, 429 F.2d 364, 372 (8th Cir. 1970). The Fourth Circuit has also rejected the dangerous notion "that it is ordinarily for the district courts to determine which schools shall be closed rather than for the school board," to which the Fourth Circuit replied, "we reject the proposition." *Allen* v. *Ashville City Board of Education*, 434 F.2d 902, 907 (4th Cir. 1970).[17]

With all respect, we submit that the trial court's extra-judicial self-assessment in this case —

> "Anybody can predict what I'm going to do if they're smart enough to know what's best for the school system."[18]

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we could have made our challenge to Judge Scott's findings on this matter more explicit.

[17] *Accord*, *Morgan* v. *Kerrigan*, 401 F.Supp. 216, 245-46 (D. Mass. 1975) (only schools in poor condition closed), *aff'd* 530 F.2d 401 (1st Cir. 1976) (no objection on appeal to closing orders); *Fitzpatrick* v. *Enid Board of Education*, 578 F.2d 858, 862 (10th Cir. 1978) (no showing that "defendants abused their discretion in their utilization of District facilities"); *Penick* v. *Columbus Board of Education*, 583 F.2d 787, 818 (6th Cir. 1978), *aff'd* 443 U.S. 449 (1979) (closing of 33 elementary schools [see 443 U.S. at 490] by local Board, not district court, affirmed); *Mitchell* v. *McCunney*, 651 F.2d 183, 186 (3d Cir. 1981) (school board decision to close schools on account of age and condition affirmed).

[18] *The Shreveport Bossier-City Times*, Feb. 15, 1981, p. 18-A, a front-page

— is quite out of line with the humility demanded of judges who wield the awesome power of desegregation by decree. Judge Scott's bold statement — and there are others of record equally eye-opening[19] — runs quite contrary to the chord of restraint sounded on another extra-judicial occasion by one of our greatest judges, Judge Learned Hand:

> "For myself it would be most irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which I assuredly do not. If they were in charge, I should miss the stimulus of living in a society where I have, at least theoretically, some part in the direction of public affairs."[20]

B. Forest Hill Elementary School Is the Only School in a Small Rural Community. It is an Excellent Facility Built and Maintained by the People of Forest Hill. The School Is the Center of Community Life. Judge Scott's

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interview with Judge Scott captioned "I'd like to explain." The interview was set forth in full as Appendix D to our opening brief to the Fifth Circuit in *Forest Hill II*. At the same time Judge Scott defended his plan in the local papers, he also permanently enjoined any member of the Forest Hill Community from so much as stepping foot on the ten acres of public property that constitute the Forest Hill School, where upset parents had gathered to protest "quietly and peaceably" (646 F.2d at 934; App., *infra*, 53a) Judge Scott's decision closing their school.

[19] *Item:* "I am going to do this since I am a big cheese." Tr. Jan. 15, 1981 Chambers Proceedings, p. 20.

Item: "I am the best expert that I know and I intend to draw this plan myself." Preliminary Opinion, June 6, 1980, Exhibit A, p. 1 (App., *infra*, 97a). Certainly Judge Scott's claiming to be his own best expert is inconsistent with the humility demanded of judges who wield the awesome power of desegregation by decree: "We approach decision-making here with humility." *United States* v. *Jefferson County Board of Education*, 372 F.2d 836, 848 (5th Cir. 1966) (per Wisdom, J.), *aff'd on rehearing en banc* 380 F.2d 385 (5th Cir. 1967), *cert. denied sub nom. Caddo Parish School Board* v. *United States*, 389 U.S. 840 (1967).

[20] L. HAND, THE BILL OF RIGHTS 73 (*The Oliver Wendell Holmes Lectures* 1958).

Unilateral Decision To Close Forest Hill School Can Hardly Be Characterized as an Exercise of Equitable Discretion.

In *Swann*, this Court spoke of the breadth and flexibility inherent in equity:

> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims."

402 U.S. at 15. We submit that Judge Scott's plan fails to meet the test of basic fairness set in *Swann*. Judge Scott's plan is basically unfair to the students at Forest Hill, both black and white, who under his plan are bused for 13 years, from kindergarten through the 12th grade, whereas the students in Lecompte are not bused at all.[21] That is plainly an inequitable distribution of the burdens of desegregation. Judge Scott's plan is also totally insensitive to the needs of the people of Forest Hill, whose community life centers around their school and whose hard-earned tax dollars built Forest Hill School.

The district court's rigidity in this case — its singlemindedness of purpose — is faithless to the weighing and balancing of interests inherent in equity. The trial court identified as its "sole purpose" the achievement of the greatest amount of inte-

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[21] True, as noted by the panel majority (App., *infra*, 3a n.3): "Since 1966, all high school students in this southeast portion of Rapides Parish have voluntarily attended the desegregated Rapides High School in Lecompte." But that is hardly a reason for increasing the burden on the elementary students at Forest Hill and for requiring the busing of five-year-olds to Lecompte.

gration possible. Never mind, said the trial court, the "logistical expense" of destroying good schools and busing five-year-olds forty miles and two hours a day. This reasoning, we respectfully submit, is plainly at odds with this Court's teaching in *Swann*. Only Chief Judge Clark's opinion below addresses the devastating practical consequences of closing Lincoln Williams and Forest Hill Schools and busing young children away from home for two hours a day. Only Chief Judge Clark's opinion is merciful enough to weigh the pleas of concerned parents, both black and white, who are justifiably worried about the safety and educational well-being of their children. Desegregation decrees, this Court has said, must be drawn "in light of the circumstances present and the options available," *Green* v. *County School Board*, 391 U.S. 430, 439 (1968), "taking into account the practicalities of the situation." *Davis* v. *School Comm'rs of Mobile County*, 402 U.S. 33, 37 (1971). We think the special circumstances of this case and the practicalities of the situation are best expressed by the testimony (Tr. Sept. 17, 1980 Proceedings, pp. 30-31) of Mary Miles, a black seamstress and mother of a five-year-old child. Her words are straightforward enough:

> "I have a five-year-old child that is entering kindergarten and it looks as if he is going to be bused about thirty-five miles away from home. And I don't see no reason for him to pass by a school to go thirty-five miles to another school, which is — I am about twenty-five miles away from home and if something happens then I have got to come twenty-five miles plus go another fifteen or thirty-five miles to go and pick him up, and I just can't see it. But to me it looks as if the issue is desegregation plan, which I am not for that, I am for saving Forest Hill Elementary School, because if we lose the school out of Forest Hill then that is all we got."

This mother's plea should not go unanswered. *Forest Hill* is a

paradigm case for this Court to speak anew to the Nation on a matter of vital public importance.

C. The United States and the Panel Majority Concede that Judge Scott Failed in His Duty to Make Essential Findings of Fact Regarding the Length of Time of Travel for Students Affected by His Plan. These Concessions Compel a Reversal and Remand.

Judge Scott's finding in his July 22 opinion (App., *infra*, 33a): "there are practically no students living in the Forest Hill district west of Forest Hill city limits" is patently erroneous. It is contradicted by Judge Scott's own admission, later in the same opinion (App., *infra*, 39a) that 23 students live west of Forest Hill in the Mill Creek area; 18 live south of Forest Hill in the Bennett Bay area; 9 live southeast of Forest Hill on Blue Lake Road. Thus some 50 students, by Judge Scott's own count, experience a considerable busing burden under his plan. The Government concedes this much. U.S. Brief [Fifth Circuit], p. 19. Yet the panel majority affirms Judge Scott's plan, leaving these 50 students hanging on the footnote hope (App., *infra*, 13a-14a n.10) of some future modification of a desegregation plan already three years old. This is a dangerous approach to appellate review of desegregation decisions.

Our position is that before any federal judge can decree extensive busing, he must first determine by findings that are capable of appellate review what the facts are regarding the length and time of travel for students affected by such a plan. *Swann*, 402 U.S. at 30-31; *Northcross* v. *Memphis Board of Education*, 444 F.2d 1179, 1183 (6th Cir. 1971); *Thompson* v. *Newport News School Board*, 465 F.2d 83, 88 (4th Cir. 1972) (en banc), *cert. denied* 413 U.S. 920 (1973); *Cisneros* v. *Corpus Christi Independent School District*, 467 F.2d 142 (5th Cir. 1972) (en banc), *cert. denied* 413 U.S. 922 (1973); *Kelley* v.

Nashville Metropolitan County Board of Education, 687 F.2d 814, 822 (6th Cir. 1982), *cert. denied* 459 U.S. ____ (1983). Certainly a judge should know what the risks to the safety and educational well-being of young children are before he orders his plan into effect. It is remarkable, and yet quite true, that Judge Scott's August 6, 1980 opinion fails on its face to consider the length and time of travel for students affected by his plan. The reader is not even told how far Forest Hill is from Lecompte. Nor is the reader told that under Judge Scott's plan five-year-olds will be bused past their neighborhood school and transported 25 miles and 60 minutes extra a day.[22] Those data, we submit, would give any reader pause.[23] We respectfully but

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[22] The bus driver route sheets introduced as Forest Hill Exhibit 14 show that 181 former Forest Hill Elementary School students must be bused past Forest Hill School en route to Lecompte. These students, including five-year-old kindergarteners, already travel as much as 25 miles to reach Forest Hill School. The route sheets of Troy Murry and Robert Melder, Forest Hill Exhibit 14, show that students are picked up as early as 6:45 a.m. and they are on buses about an hour en route to Lecompte. Contrast the Chief Justice's explicit recital of the busing distance and time in *Swann* (402 U.S. at 30): "The trips for elementary school pupils average about seven miles and the District Court found that they would take 'not over 35 minutes at the most.'"

[23] In *Tasby* v. *Estes*, 572 F.2d 1010 (5th Cir. 1978), a case familiar to this Court, the Fifth Circuit took the position that appellate review of a desegregation decree involving busing is meaningless without adequate findings of fact regarding time and distance:

> "There are no adequate time-and-distance studies in the record in this case. Consequently, we have no means of determining whether the natural boundaries and traffic considerations preclude either the pairing and clustering of schools or the use of transportation to eliminate the large number of one-race schools still existing."

572 F.2d at 1014. On review here, certiorari was dismissed as improvidently granted, presumably because this Court also realizes that without adequate findings regarding the times and distances young children are being bused, meaningful appellate review is impossible. *Estes* v. *Metropolitan Branches, Dallas NAACP*, 444 U.S. 437 (1980). On remand, the district court in *Estes* made extensive findings of fact regarding time and distance, and the court exempted children in grades K-3 from bus rides longer than 30 minutes.

firmly submit that where the safety and well-being of young children are at stake, the law requires more than the *ipse dixit* of the district court, however well-meaning or self-confident the trier may be. Otherwise, "the entire federal-court system will experience the disaffection which accompanies violation of Cicero's maxim not to 'lay down one rule in Athens and another rule in Rome.' " *Columbus Board of Education* v. *Penick*, 443 U.S. 449, 492 (1979) (Rehnquist, J. dissenting).

D. Judge Scott Erred in Refusing To Hear Forest Hill's Evidence Regarding the Dangers of Traveling from Forest Hill to Lecompte and the Risks to the Young Children Involved.

When Mr. Roy attempted to introduce the testimony of bus drivers regarding the risks to the young children, Judge Scott cut him off. Tr. June 30, 1981 Proceedings, pp. 56, 70. A duty to find facts necessarily includes a duty to hear relevant evidence bearing on those facts. It was constitutional error for Judge Scott to exclude the proffered testimony. *Swann*, 402 U.S. at 30-31. The Government's and the panel majority's blind refusal to weigh such evidence in considering the soundness of Judge Scott's plan is insensitive at best; at worst, it is dangerous to the safety and health of young children.[24]

Tasby v. *Wright*, 520 F.Supp. 683, 714-733 (N.D. Tex. 1981). Other district courts, after meticulously detailing the times and distances involved, have reached similar results, with circuit court approval. See, *e.g.*, *Thompson* v. *Newport News School Board*, 363 F.Supp. 458, 462-64 (E.D. Va. 1973) (Walter Hoffman, J.) (grades K-2 exempt from busing plan), *aff'd* 498 F.2d 195 (4th Cir. 1974) (en banc); *Smiley* v. *Blevins*, 514 F.Supp. 1248 (S.D. Tex. 1981) (grades K-1 exempt from busing).

[24] We disagree completely with the Government's suggestion (U.S. Brief [Fifth Circuit], p. 37, n.40) that "in view of the nature of this testimony — *i.e.*, kindergarteners soiling their pants while on the school buses — the exclusion was proper." Unlike the Government, concerned parents everywhere would naturally worry about five-year-olds soiling their pants while on a ten-mile bus ride to school. Moreover, the proffered testimony also shows that the bus

IV.

LESS DRASTIC REMEDIAL ALTERNATIVES WERE AVAILABLE TO THE DISTRICT COURT TO CORRECT THE CONDITION IT FOUND IN VIOLATION OF THE CONSTITUTION.

A. Judge Scott's Disregard of Neighborhood Considerations for Rural Schools and His Peremptory Rejection of Private Plaintiffs' Proposal To Allow Lincoln Williams and Forest Hill To Remain K-3 Schools Is Unreasonable and a Denial of Equal Protection of the Laws.

In *Forest Hill I* a unanimous panel of the Fifth Circuit said that Judge Scott's statement that neighborhood schools do not exist outside of metropolitan areas was a "curious observation," and the panel went on to hold (App., *infra*, 62a):

> "The appellants contend that the district court erred in failing to accord the same respect to neighborhood schools in rural areas as to those in Alexandria; the comment that there can be no rural neighborhood schools is cited as an example of this asserted misconception. We agree that the comment, taken in its absolute context, is clearly erroneous. A review of case law concerning the neighborhood school concept will reveal that it should apply equally to metropolitan and rural facilities."

Having corrected Judge Scott as a matter of law, the *Forest Hill I* panel reversed and remanded for a re-examination of specific desegregation measures, saying (App., *infra*, 66a):

> "We cannot ignore the district court's disregard of neighborhood considerations for rural schools in this context, particularly where K-2 students in Alexandria were spared transfer to the point that three schools remain virtually all-black."

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drivers "recalled accidents on the bus where the little kindergarten kids, one would fall asleep, fall on the floor, and ruin their pants." Tr. June 30, 1981 Proceedings, p. 70.

This last statement gave the parents of Forest Hill, both black and white, hope at last. And the Court's clue led private plaintiffs to propose that Lincoln Williams and Forest Hill remain open as K-3 schools. But Judge Scott rejected this proposal, quite peremptorily, with the cryptic comment (App., *infra*, 35a): "We cannot allow K-3 schools . . . ." Judge Scott did not explain why K-3 schools were impermissible.

On Forest Hill's second appeal to the Fifth Circuit, the United States conceded Judge Scott had misstated the law of the Fifth Circuit in this regard. U.S. Brief [Fifth Circuit], pp. 28-29 n.33. Indeed, in *Lee* v. *Macon County Board of Education*, 616 F.2d 805, 812 (5th Cir. 1980), the Fifth Circuit noted that there is nothing unlawful about omitting grades K-3 from a pairing or grouping program where good reasons for doing so appear in the record. Since in this case Judge Scott left three all-black neighborhood schools intact in Alexandria, we submit the young children in the rural parts of the Parish, both black and white, are entitled to the same treatment under the Fifth Amendment's guarantee of equal protection of the laws and under the test of basic fairness laid down in *Swann*.[25] The panel majority in *Forest Hill II*, instead of rationalizing Judge Scott's cryptic rejection of the K-3 proposal, should have instructed Judge Scott to exercise his discretion — "in the first instance"[26] — in accordance with the law of the Fifth Circuit,

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[25] What was good law in Montgomery County, Alabama, is good law in Rapides Parish, Louisiana:

> "It cannot be denied that there is value in having elementary children attend schools near their homes. Recognition of this benefit of neighborhood elementary schools does not constitute abandonment of the goal of desegregation as required by the United States Constitution."

Carr v. *Montgomery County Board of Education*, 377 F.Supp. 1123, 1138 (M.D. Ala. 1974) (per Johnson, C.J.) *aff'd* 511 F.2d 1374 (5th Cir. 1975), *cert. denied* 423 U.S. 986 (1975).

[26] *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406, 420 (1977). In

precisely as did the earlier unanimous panel in *Forest Hill I*. The Fifth Circuit has never required the busing of five-year-olds: "We have uniformly held that kindergarten children need not be included in desegregation plans . . . ." *Pitts* v. *Cherry*, 598 F.2d 1005, 1006 (5th Cir. 1979) (citations omitted). Plainly, the panel majority in this case erred in ruling, as a matter of law, that *Swann* requires all grades to be bused, regardless of the times and distances of busing and the threat to the safety and educational well-being of the children involved.[27] Such a harsh result, particularly in a case involving a rural com-

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Dayton I this Court cautioned that: "The proper observance of the division of functions between the federal trial courts and the federal appellate courts is important in every case. It is especially important in a [desegregation] case . . . ." 433 U.S. at 410.

[27] Citing this Court's denial of certiorari in the Nashville case, *Kelley* v. *Nashville Metropolitan County Board of Education*, 687 F.2d 814 (6th Cir. 1982), *cert. denied* 459 U.S. ___ (1983), the panel majority stated (App., *infra*, 12a): "This constitutionally erected barrier to the operation of segregated schools applies to all children within the school system, including those in elementary grades." In *Kelley*, the Sixth Circuit rightly objected to a district judge's order that would have left 47 of 75 elementary schools more than 90% one-race, with 14 schools projected as more than three-fourths black. See 687 F.2d at 820. But that is a far cry from the situation in Rapides Parish viewed as a whole. The panel majority has read far too much into this Court's denial of certiorari in *Kelley*. A much better window to this Court's thinking on the matter of busing elementary-age children is the following excerpt from the oral argument in the *Estes* case, *supra* note 23, which was argued in this Court on October 29, 1979:

> "THE COURT: Well, doesn't the district court have some discretion when it comes to very young children in saying there shall be less bussing with respect to them than with respect to older children?
> "MR. WALLACE [Deputy Solicitor General]: Some discretion based on adequate factual inquiry and findings.
> "THE COURT: Didn't *Swann* say precisely that, Mr. Wallace?
> "MR. WALLACE: *Swann* did say that, and I answered consistently with that answer."

Tr. Oral Arg. pp. 39-40 (Hoover Reporting Co., Inc.), reproduced in THE COMPLETE ORAL ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES 1979 TERM (University Publications of America Inc.; microfiche).

munity's only school, is certainly not required by *Swann*. Furthermore, the panel majority's approach in the instant case is squarely at odds with the law of the Fourth Circuit:

> "If certain proper circumstances may justify an entire school remaining of one race then, *a fortiori*, the same circumstances will justify the two lowest grades and kindergarten remaining predominantly of one race, especially considering the time of travel and age of the children."

Thompson v. *Newport News School Board*, 363 F.Supp. 458, 463-64 (E.D. Va. 1973), *aff'd* 489 F.2d 195 (4th Cir. 1974) (en banc).

B. Judge Scott's Rejection of Forest Hill Plan 2 and School Board Plans 1, 2, and 3 Because They Proposed Busing Blacks into Forest Hill Is Unwarranted in Law.

Judge Scott rejected various plans zoning blacks into Forest Hill because he said (App., *infra*, 35a) they would involve "segregated bussing" in violation of the Constitution.[28] Manifestly, this is legal error. There is nothing illegal about proposals to bus blacks into Forest Hill, especially since white students at Forest Hill have been bused to Rapides Senior High School in Lecompte since 1966.[29] Likewise Judge Scott's rejection of the School Board's proposal to zone K-5 blacks from Lecompte to Forest Hill was based on a misunderstanding of

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[28] The district court is quite mistaken in saying (App., *infra*, 35a): "We doubt seriously if there are 15 black students in the Woodworth area." In point of record fact, certified copies of the trip tickets of bus drivers Alex Baker, Jr., J. D. Glass, and Vernon Linzey show that 31 black elementary students live in the Woodworth area and could easily be bused the shorter route to Forest Hill. Forest Hill Exhibit 14; Tr. June 30, 1981 Proceeding, pp. 55-56 (testimony of Parks W. Sansing).

[29] The district court and the panel majority view the Cheneyville, Forest Hill, and Lecompte schools "as integral elements of a single educational

the law. Judge Scott took the position (App., *infra*, 36a) that "Students in a one-race zone can be bussed for purposes of integration but they should not be bussed to a K-5 zone when a K-5 school exists in their own zone." The obvious question at this point is what about the 181 Forest Hill students who are bused past their neighborhood school under Judge Scott's plan? At any rate, Judge Scott is quite mistaken in saying he was powerless to zone K-5 blacks from the Lecompte area into the Forest Hill School. Non-contiguous subzoning is a well-established desegregation tool in the Fifth Circuit and elsewhere. See, *e.g.*, *Lee* v. *Macon County Board of Education*, 616 F.2d 805 (5th Cir. 1980); *Swann*, 402 U.S. at 27.

It is apparent from the above, that at least three legal errors cabined the exercise of the trial court's discretion within too narrow bounds. In these circumstances, a reversal and remand, under proper instructions as to the law, are in order. *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406, 419 (1977). With regard to other plans, all we can do here is point to the transcript of the June 30, 1981 hearing on remand, which shows a concerted effort on the part of the plaintiffs, the Rapides Parish School Board, and Forest Hill intervenors to draw up a realistic plan, one that promised to work effectively

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network" (App., *infra*, 9a), and both the trial court (App., *infra*, 39a) and the panel majority (App., *infra*, 3a n.3) make much of the fact that Forest Hill students have voluntarily attended Rapides Senior High School in Lecompte since 1966. But the record is uncontradicted that when Rapides Senior High School Consolidated Taxing District 61 was voted upon favorably:

> "the *sine qua non* and/or *quid pro quo* for the passage of the bond election in 1964 to erect and construct Rapides Senior High School were the reciprocal agreements and understandings among *all* of the citizens of the areas involved, that the elementary schools in Forest Hill, Louisiana, Cheneyville, Louisiana, and Lecompte, Louisiana, would remain open and in their communities."

Affidavit of School Superintendent E. Allen Nichols, 3 June 1982, 2nd Supp. R., Exhibit "C", para. 7.

while at the same time not destroying good schools so badly needed by both blacks and whites alike.[30] We would also respectfully direct this Court's attention to the dissenting opinion of Chief Judge Clark where a realistic and less drastic alternative plan is plainly set forth.

CONCLUSION

It would be easy for this Court to dispose of this case on the general proposition that district courts have broad discretion in desegregation cases. And of course they do. But as Chief Justice Marshall stated long ago, to say that the matter is within a court's discretion means that it is addressed not to the court's "inclination, but to its judgment; and its judgment is to be guided by sound legal principles." *United States* v. *Burr*, 25 Fed. Cas. 30, 35 (1807). The decision to close Forest Hill School rests on grounds that cannot be supported, and the questions presented are substantial.[31] This Court should therefore grant the petition for writ of certiorari.

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[30] In *Green* v. *County School Board*, *supra*, this Court emphasized that desegregation plans must "promise[ ] realistically to work, and promise[ ] realistically to work *now*." 391 U.S. at 439. In point of fact (App., *infra*, 38a), only 47 of 311 former Forest Hill Elementary School students have remained in the public school system. One wonders how any plan that closes two good schools and runs both blacks and whites out of the public school system and into their neighborhood Baptist church for their schooling can be said to be "realistic" in any rational sense. During the 1980-81 academic year, 178 students attended the Forest Hill Free School, which was built on the premises of the local Baptist church in Forest Hill. The latest figures, for 1981-82, show an increase in the number of students attending the Forest Hill Free School to 198, including 7 black children. A photograph showing the protest of the parents of Forest Hill on the opening day of the 1981-82 school year appears *infra*, Appendix T, 111a.

[31] Forest Hill School remains intact. A janitor has cleaned the rooms and maintained the grounds for three years. None of the School's furnishings has been moved. It is not too late to save it.

We leave the last word to Webster:

> "'Sir, you may destroy this little Institution; it is weak; it is in your hands! . . . You may put it out.
>
> "'It is, Sir, as I have said, a small College. And yet, *there are those who love it*—.' "[32]

Respectfully submitted,

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JULY 1983

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[32] These lines, of course, are from Webster's immortal peroration in the *Dartmouth College Case*. They do not appear in Henry Wheaton's official report of the case, *Dartmouth College* v. *Woodward*, 4 Wheat. 518 (1818). They were, however, preserved for students of the law in Rufus Choate's *Eulogy on Daniel Webster* (1853), in I THE WORKS OF RUFUS CHOATE WITH A MEMOIR OF HIS LIFE 493, 516 (S. G. Brown, ed. Boston 1862) (emphasis in original).

83-129

In the Supreme Court of the United States

OCTOBER TERM, 1983

Nos.

RAPIDES PARISH SCHOOL BOARD, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL.

CLYDE HOLLOWAY, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL.

APPENDIX TO PETITIONS FOR WRITS OF CERTIORARI

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INDEX

INDEX - Continued

APPENDIX A

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT

MARCH 30, 1983

No. 81-3462

VIRGIE LEE VALLEY, ET AL.,
PLAINTIFFS-APPELLEES,

v.

RAPIDES PARISH SCHOOL BOARD,
ET AL., DEFENDANTS-APPELLANTS,
AND
CLYDE HOLLOWAY, ET AL.,
INTERVENORS-APPELLANTS.

Appeals from the United States District Court for the Western District of Louisiana.

Before CLARK, Chief Judge, POLITZ and RANDALL, Circuit Judges.

POLITZ, Circuit Judge:

For the sixth time we review an aspect of the litigation, initiated in 1965, involving the desegregation of the public schools in Rapides Parish, Louisiana. In *Valley v. Rapides Parish School Board*, 646 F.2d 925 (5th Cir. 1981), *cert. denied*, 455 U.S. 939, 102 S.Ct. 1430, 71 L.Ed.2d 650 (1982) (*Rapides I*), we affirmed the finding and conclusion by the district court[1] that the vestiges of a state-imposed dual school system had not been fully eradicated, sanctioning most components of the remedial program fashioned by the district court. We reversed

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[1] 499 F.Supp. 490 (W.D.La.1980), *aff'd in part, rev'd in part and remanded*, 646 F.2d 925 (5th Cir.1981), *cert. denied*, 455 U.S. 939, 102 S.Ct. 1430, 71 L.Ed.2d 650 (1982).

in part and remanded in order that the district court might reconsider and, if re-imposed, explain in greater detail that portion of its order directing the closure of Lincoln Williams, a predominantly black K-8 school in Cheneyville, and the closure of the predominantly white K-8 school in Forest Hill, coupled with the transfer of students from these two schools to an elementary and middle school in Lecompte, a community located midway between Cheneyville and Forest Hill.

Following a post-remand evidentiary hearing, the district court reviewed and rejected various alternatives proposed by the parties and readopted its original plan. On appeal, the school board and Forest Hill intervenors[2] focus their attack on the court's refusal to reopen the Forest Hill Elementary School. Concluding that the remedy imposed was commensurate with the constitutional violation, we affirm.

BACKGROUND FACTS

A detailed exposition of the factual and procedural history of this protracted litigation is set forth in our earlier opinion, reported at 646 F.2d 945. Our review today focuses on the legality of the district court's solution to the thorny problem presented by the continued existence of Lincoln Williams as a virtually all-black school (92.9%). In its earlier assessment, the district court found no white students available in the Cheneyville area to desegregate Lincoln Williams, and elected to close the school and reassign its pupils to Lecompte Elementary (K-3) and Carter Raymond Junior High (4-8), both in Lecompte. 499 F.Supp. 490. At the same time the court determined to reassign the student population of Forest Hill, with a minority enrollment of 8.3%, to the two Lecompte schools. Aside from Lecompte's central location, the district

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[2] We earlier affirmed the district court's denial of the Forest Hill residents' motion to intervene. 646 F.2d at 941-42. On remand, the district court reconsidered the reasons underlying its initial ruling and granted the Forest Hill residents leave to intervene. The intervenors participated in the hearing on remand and in briefing and oral argument before this court.

court cited no supportive reasons for the transfer of Forest Hill students to Lecompte and concomitant closure of that educational facility.[3]

In directing the district court to consider the various alternatives to the dismantling of Lincoln Williams and Forest Hill, and, in the event the court adhered to its 1980 decision, to explain the bases for rejecting such alternatives, we stated:

> We cannot lend our sanction so easily, however, to those portions of the plan involving pupils and facilities in Wards 3 and 4. Here, as we have described, the district court elected to close a predominantly white rural school, Forest Hill, and a predominantly black school, Lincoln Williams, equidistant in different directions from the town of Lecompte, and to transfer their pupils to Lecompte schools. As far as we can determine, the only justification for closing Lincoln Williams was its predominance of black pupils. The court admitted that Forest Hill is more modern than Lecompte Elementary, but described the latter as having "much better location for purposes of integration," in terms of distance for busing of reassigned pupils. Alternatives are only sparingly mentioned.
>
> These findings are an insufficient factual basis on which to approve the closing of Forest Hill and Lincoln Williams. Equally effective alternatives may exist which would avoid the closing of a modern facility and the intercommunity transfer of kindergarten pupils. These should be explored on remand and, if the district court adheres to its present plan, specific reasons for their rejection should be given. We cannot ignore the district court's disregard of neighborhood considerations for rural schools in this context . . . . Specific desegregation measures in southeastern Rapides Parish should be re-examined in light of the full range of mitigating equitable considerations.

646 F.2d at 940-41.

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[3] Since 1966, all high school students in this southeast portion of Rapides Parish have voluntarily attended the desegregated Rapides High School in Lecompte.

On remand, the district court received additional evidence from the Forest Hill intervenors, reviewed the various proposals submitted, and reinstated the student assignments for the Poland, Cheneyville, Lecompte and Forest Hill communities.[4] The trial judge reiterated his conviction that the dismantling of Lincoln Williams and the assimilation of its pupils into the Lecompte schools was the only reasonable alternative to perpetuation of Lincoln Williams as a racially identifiable school. Determined to effect an equitable distribution of the burden of desegregation, the district court remained convinced that Forest Hill's students should also be assigned to the Lecompte schools.

Having previously decided in *Rapides I* that the constitutionally mandated goal of educational unitization has not been

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[4] In *Rapides I* we described the relevant features of the district court's original plan for desegregating several Rapides Parish schools, and the conditions the plan was designed to ameliorate:

> Before promulgation of the plan the Ward 3 town of Lecompte contained three schools, Lecompte Elementary, Carter Raymond, and Rapides High School. Lecompte Elementary and Carter Raymond each served pupils in grades K-8 under earlier orders. Each school had a majority of black pupils in the range of approximately 60 per cent. The Lincoln Williams School in Cheneyville, some 10 miles to the southeast of Lecompte, served all area pupils in grades K-8. The school was . . . approximately 93% black, and is the "spur" for additional relief in this area of the parish. About the same distance to the west of Lecompte is the community of Forest Hill, which contained a K-8 school with a black attendance percentage of only 8.3. High school students from both communities went on to Rapides High School in Lecompte. Northeast of Lecompte in Ward 2 is the community of Poland, which had a K-12 school with 9.6 percent black pupils in attendance.
>
> The plan provided for Lecompte Elementary to become a K-3 facility, and for Carter Raymond to serve grades 4-8. Lincoln Williams was closed, and its K-8 pupils were transferred to the Lecompte schools. Forest Hill was also closed, with its pupils transferred to Lecompte Elementary and Carter Raymond. Pupils from the Poland School in grades 9-12 were shifted to Rapides High School.

646 F.2d at 933. All major provisions of this plan, together with certain minor amendments, were incorporated in the framework of the court's 1981 remedy.

achieved in Rapides Parish,[5] we need only address the appropriateness of the remedy ordered.

GUIDONS [*sic*]

Failure on the part of school authorities to implement a constitutionally prescribed unitary school system brings into play the full panoply of the trial court's remedial power. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); *Rapides I*. To discharge this weighty responsibility, the court is obliged to expunge from the public schools all vestiges of unlawful segregation. *Swann; Lee v. Macon County Board of Education*, 616 F.2d 805 (5th Cir.1980); *United States v. DeSoto Parish School Board*, 574 F.2d 804 (5th Cir.), *cert. denied*, 439 U.S. 982, 99 S.Ct. 571, 58 L.Ed.2d 653 (1978).

When reviewing a trial court's desegregation remedy, we are limited to ascertaining whether the court abused its discretion. *See Milliken v. Bradley*, 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977); *Swann*. We are mindful that "the scope of a district court's equitable power to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann*, 402 U.S. at 15, 91 S.Ct. at 1276. *See United States v. DeSoto Parish School Board*. Although "free to reassess the district court's conclusions of law, its findings of fact must be accepted unless they are clearly erroneous." *Ross v. Houston Independent School Dist.*, 699 F.2d 218, 226 (5th Cir.1983), (*citing Pullman-Standard v. Swint*, ____ U.S. ____, 102 S.Ct. 1781, 72 L.Ed.2d 66 (1982)).

A trial judge's insight into local conditions is to be accorded substantial deference. While the remedy fashioned by the

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[5] That this action remains in the remedial phase distinguishes it from *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 96 S.Ct. 2697, 49 L.Ed.2d 599 (1976), where a unitary system had been achieved, and subsequent racial imbalances were precipitated by demographic changes rather than the acts or omissions of the school board. *See United States v. Board of Education of Valdosta, Georgia*, 576 F.2d 37 (5th Cir.), *cert. denied*, 439 U.S. 1007, 99 S.Ct. 622, 58 L.Ed.2d 684 (1978).

court "may be administratively awkward, inconvenient, and even bizarre" in some cases, "and may impose burdens on some . . . all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems." *Swann*, 402 U.S. at 28, 91 S.Ct. 15 1282.

Appellate review of the district court's exercise of its broad discretion in formulating a desegregation plan is guided by the tripartite analysis set forth in *Milliken*. Consistent with *Milliken's* teachings, a remedial order must be carefully tailored to correct the constitutionally infirm condition, restore the victims of segregation to the positions they would have enjoyed absent the proscribed conduct, and, where congruent with constitutional precepts, accommodate the interest of school officials in administering their affairs without judicial interference.

LINCOLN WILLIAMS

It is axiomatic that the existence of a few racially homogeneous schools within a school system is not per se offensive to the Constitution. *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 97 S.Ct. 2766, 53 L.Ed.2d 851 (1977); *United States v. DeSoto Parish School Board*; *United States v. Seminole County School District*, 553 F.2d 992 (5th Cir.1977). The retention of all-black or virtually all-black schools within a dual system is nonetheless unacceptable where reasonable alternatives may be implemented. *United States v. DeSoto Parish School Board*; *Lemon v. Bossier Parish School Bd.*, 566 F.2d 985 (5th Cir.1978). *See Price v. Denison Indept. School Dist.*, 694 F.2d 334 (5th Cir.1982).

Various plans approved by the district court over the long history of this litigation did not realize one of their primary goals: desegregation of the Cheneyville schools. The court's attempt in 1975 to accomplish this objective by closing the majority white Cheneyville High School (K-12), and assigning all children residing in Cheneyville to Lincoln Williams proved unsuccessful because of an exodus of white pupils. On original hearing, and again on remand, the district court concluded that

this constitutionally impermissible condition could not be remedied by pairing or clustering with the school in Poland, the only accessible "white" school.[6] Absent a pool of available white students, the court opted to reassign students living east of Cheneyville to Poland, which was reduced to a K-6 facility, and to transfer Poland's seventh and eighth grade students to Jones Street School. These assignments increased Poland's black student population from 9.6% to 36.8%. The district court was obviously persuaded, both before and after remand, that the only viable alternative to a segregated education for the remaining K-6 students in Cheneyville was to reassign them to the schools in Lecompte.

Nothing in the record attests to the presence of geographic or demographic barriers, insuperable distances, excessive travel times, or other factors which might militate against the court's resort to busing, a "normal and accepted tool of educa-

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[6] In arriving at this conclusion in 1980, the court took into consideration the likely recurrence of the "white flight" phenomenon if Lincoln Williams and Poland were clustered or paired. This rationale was reaffirmed in the court's post-remand decision. No objection has been interposed to the court's finding in this regard.

Generally speaking, community opposition to desegregation which takes the form of white flight will not justify a district court's failure to compel the total elimination of a non-unitary school system. *United States v. Scotland Neck City Board of Education*, 407 U.S. 484, 92 S.Ct. 2214, 33 L.Ed.2d 75 (1972). We have nonetheless held that the trial judge, in choosing among permissible plans, may select one calculated to minimize white boycotts. *Stout v. Jefferson County Board of Education*, 537 F.2d 800 (5th Cir.1976). *Accord, Ross v. Houston Independent School Dist.* (in seeking reduction in the number of one-race schools, the district court could not ignore diminished white enrollment attributable to "white flight"); *United States v. DeSoto Parish School Board* (a court need not ignore a likely danger of an exodus of white children from a school system). *See Parents Assn. of Andrew Jackson High School v. Ambach*, 598 F.2d 705 (2d Cir.1979); *Higgins v. Board of Education of the City of Grand Rapids*, 508 F.2d 779 (6th Cir.1974). Cognizant as we are of the deference to which the trial court's on-the-spot knowledge of this complex situation is entitled, *Swann*, we cannot gainsay its judgment that pairing or clustering with Poland would "in practice produce not more but less desegregation." *Stout*, 537 F.2d at 802.

tional policy," *Swann*, 402 U.S. at 29, 91 S.Ct. at 1282. Indeed, Cheneyville is approximately nine miles south of Lecompte and is connected by a major highway, a portion of which is multi-laned. There is nothing to indicate that transportation of the former Lincoln Williams students to Lecompte presented any kind of logistical difficulty. Student busing over substantial distances is commonplace in the southeastern portion of Rapides Parish, where the population is diffused and some families live many miles from school facilities. Absent the desegregation wrinkle, busing has traditionally been warmly received as a welcome public service, particularly by families living in rural areas.

The record reflects that the efforts to desegregate Poland were progressing well. The court's obvious reluctance to disrupt this part of the total parish plan was eminently reasonable. *See United States v. Stout*; *United States v. School District of Omaha*, 521 F.2d 530 (8th Cir.) *cert. denied*, 423 U.S. 946, 96 S.Ct. 361, 46 L.Ed.2d 280 (1975). Because Lecompte Elementary and Carter Raymond were approximately 60% black, use of pairing or clustering techniques to transfer white students to Lincoln Williams would have served only to further skew the percentage of black pupils in these schools. However, both Lecompte schools could physically absorb the relatively small number of Lincoln Williams students. All relevant factors considered, we conclude that the decision to close Lincoln Williams and to reassign its students to Lecompte was within the ambit of the district court's expansive remedial authority.[7]

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[7] Invoking a formidable array of Fifth Circuit precedent, the school board contends that Lincoln Williams could not be closed for reasons relating to its racial character. *See Arvizu v. Waco Independent School District*, 495 F.2d 499 (5th Cir.1974); *Ellis v. Board of Public Instruction of Orange County, Florida*, 465 F.2d 878 (5th Cir.1972), *cert. denied*, 410 U.S. 966, 93 S.Ct. 1438, 35 L.Ed.2d 700 (1973); *Lee v. Macon County Board of Education*, 448 F.2d 746, 753-54 (5th Cir.1971); *Mims v. Duval County School Board*, 447 F.2d 1330 (5th Cir.1971); *Bell v. West Point Municipal Separate School District*, 446 F.2d 1362, 1363 (5th Cir.1971); *Gordon v. Jefferson Davis Parish School Board*, 446 F.2d 266 (5th Cir.1971); *Wright v. Board of Public Instruction of Alachua Co., Fla.*, 431 F.2d 1200, 1202 (5th Cir.1970); *Robert-*

FOREST HILL

Once having confected an antidote for Cheneyville's segregative ills, the court was confronted with yet another dilemma — the projected increase in minority enrollment in the Lecompte schools occasioned by the influx of students from Lincoln Williams. This ineluctably led to the court's consideration of the predominantly white student body at Forest Hill, approximately nine miles west of Lecompte. Viewing the Cheneyville, Forest Hill and Lecompte schools as integral elements of a single educational network,[8] the court resolved to eradicate all traces of unconstitutional segregation by dismantling Forest Hill's K-8 facility and shifting its students to Lecompte. The Forest Hill intervenors and the school board challenge the court's conclusion that the assignment of all elementary and middle school pupils within the tri-community region to Lecompte schools, accompanied by the closing of Forest Hill, offered the most reasonable prospect of successful desegregation, contending that the proposals they submitted

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son v. Natchitoches Parish School Board, 431 F.2d 1111 (5th Cir.1970); *Hilson v. Ouzts*, 431 F.2d 955, 956 (5th Cir.1970); *Carr v. Montgomery County Board of Education*, 429 F.2d 382, 385 (5th Cir.1970).

This line of authority prohibits a school board's closure of schools racially identifiable as "black" for discriminatory purposes, as well as judicial approval thereof, but does not diminish the district court's traditional authority to dismantle one-race schools as a palliative for segregation. *See e.g., Swann*; *Morgan v. McDonough*, 689 F.2d 265 (1st Cir.1982); *Lemon v. Bossier Parish School Board. See also Mitchell v. McCunney*, 651 F.2d 183 (3d Cir.1981) (closure of homogeneous black and white schools approved). It follows that the court's utilization of school closure as a remedial device, rather than as a means of perpetuating a dual system, did not, in contradistinction to the argument advanced by counsel for Forest Hills, function to deprive pupils of either school of their right to equal protection of the law.

[8] We approved the district court's implementation of a parish-wide remedy in *Rapides I*, based on evidence that "[t]he entire parish operated as a dual segregated system in the past, and . . . that the vestiges have not been eradicated 'root and branch' as required." 646 F.2d at 938. Once a constitutional violation of this dimension had been shown, the court was empowered to embrace Poland, Cheneyville, Lecompte and Forest Hill within a single remedial plan.

would function more effectively to remedy the discrimination found to exist.

None of the parties take [*sic*] issue with the district court's unequivocal rejection of the school board's initial suggestion that Lecompte Elementary be closed and its students transported to Forest Hill. Among the factors influencing this decision were the adequacy of Lecompte Elementary's facilities, its central location, and the relative ease of busing Forest Hill students to Lecompte. Given the lack of a feasible alternative to Lincoln Williams' closure, the court was impelled to seek out, within practical limitations, an equitable allocation of the burden of desegregation by declining to close a second majority black school. *Arvizu v. Waco Independent School District*, 495 F.2d 499 (5th Cir.1974); *Cisneros v. Corpus Christi Independent School District*, 467 F.2d 142 (5th Cir.1972) (en banc), *cert. denied*, 413 U.S. 920, 93 S.Ct. 3053, 37 L.Ed.2d 1041 (1973). *See Brice v. Landis*, 314 F.Supp. 974 (N.D.Cal.1969) (when minority school being closed has adequate facilities and white students not bused, closing unjustified).

Other suggestions urged on remand were eliminated by the court for similar reasons. One series of suggestions called for the selective busing of a specified number of black children from Lecompte or Woodworth to Forest Hill (Forest Hill plans 1, 2 and 4). Another suggestion advocated maintenance of Lincoln Williams and Forest Hill as K-8 schools, and Lecompte Elementary as a K-4 school, with black pupils from Lecompte grades K-4 bused to Forest Hill, and white pupils from Lecompte grades 5-8 bused to Lincoln Williams. Under this suggestion, Lecompte grade 4 would become almost all white, and Lincoln Williams grades 1-4 all black (School Board plan 1). Yet another series of suggestions sought the establishment of specific grade configurations at Forest Hill and Lecompte through the closure of Lincoln Williams, and the creation of K-5 schools at Forest Hill and Lecompte, a 6-8 school at Carter Raymond, and a K-6 school at Poland (School Board plans 2 and 3), anticipating the transportation of 78 and 108 Lecompte children to Forest Hill, respectively.

None of the plans suggested by the school board or the Forest Hill intervenors adequately insure a fair reconciliation of the competing interests involved. Some of the proposals would have unfairly burdened minority students. Others would in all probability have precipitated a reversion to the impermissible status quo — the perpetuation of Lincoln Williams as an essentially one-race school. None would spread equally the burden of desegregation.

By way of contrast, the plan developed by the court, with precious little of the assistance it had a right to expect from the parties, envisions the equidistant transportation of an equivalent number of white and black students in the same age bracket. The court's plan anticipates an even-handed distribution of the travails of desegregation. *See United States v. Texas Education Agency*, 467 F.2d 848 (5th Cir.1972) (en banc). *See also Mitchell v. McCunney*, 651 F.2d 183, 189 (3d Cir.1981) ("school board has an obligation to implement a student reassignment plan that will not dislocate black students significantly more than white students"). Plans submitted by the school board and the intervenors would not achieve the measure of desegregation realistically attainable. Thus their rejection by the district court did not constitute error or an abuse of discretion. *See Davis v. Board of School Commissioners*, 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed.2d 577 (1971).

Perhaps the most problematic of all proposals evaluated and rejected by the district court concerns the survival of both Lincoln Williams and Forest Hill as racially identifiable K-3 institutions. Pursuant to this proposal, first suggested by the private plaintiffs and later espoused by the Forest Hill intervenors, children in the early elementary grades would attend schools within their neighborhoods. While the court's opinion provides no guidance as to the rationale underlying its disallowance of neighborhood schools, our independent examination of the record persuades us of the appropriateness of the court's position.

Though mindful of the worthy community values inherent in a neighborhood school, the maintenance of such values may not

serve to supersede the constitutional imperative of desegregation. *See Swann*; *Rapides I*. We need hardly remind of that mandate at this point nearly three decades after *Brown v. Board of Education*.[9] Federal courts are obliged to "make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis*, 402 U.S. at 37, 91 S.Ct. at 1292. This constitutionally erected barrier to the operation of segregated schools applies to all children within the school system, including those in elementary grades. *Kelley v. Metropolitan County Board of Education of Nashville and Davidson County, Tenn.*, 687 F.2d 814 (6th Cir.1982), *cert. denied*, ____ U.S. ____, 103 S.Ct. 834, 74 L.Ed.2d ____ (1983); *Adams v. United States*, 620 F.2d 1277 (8th Cir.), *cert. denied*, 449 U.S. 826, 101 S.Ct. 88, 66 L.Ed.2d 29 (1980). *See Lee v. Macon County Board of Education*; *Anderson v. Dougherty County Board of Education*, 609 F.2d 225 (5th Cir.1980); *United States v. Board of Education of Valdosta, Ga.*, 576 F.2d 37 (5th Cir.), *cert. denied*, 439 U.S. 1007, 99 S.Ct. 622, 58 L.Ed.2d 684 (1978); *Mills v. Polk County Board of Education*, 575 F.2d 1146 (5th Cir.1978). Since "desegregation plans cannot be limited to the walk-in school," *Swann*, 402 U.S. at 30, 91 S.Ct. at 1283, courts must explore the feasibility of a variety of remedial methods before lending their judicial imprimatur to the propagation or maintenance of one-race elementary schools. *Tasby v. Estes*, 572 F.2d 1010 (5th Cir.1978), *cert. dism. sub nom Estes v. Metropolitan Branches of the Dallas NAACP*, 444 U.S. 437, 100 S.Ct. 716, 62 L.Ed.2d 626 (1980). *See Swann*; *Lee v. Macon County Board of Education*. *See also Davis v. East Baton Rouge Parish School Bd.*, 570 F.2d 1260 (5th Cir.1978), *cert. denied*, 439 U.S. 1114, 99 S.Ct. 1016, 57 L.Ed.2d 72 (1979) (elementary, middle and high schools).

Student transportation, one of the "desegregation tools" approved by the Supreme Court, cannot be discounted as a valid alternative to the education of elementary school children in a segregated environment unless the record demonstrates

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[9] 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed.2d 873 (1954).

that "the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process." *Swann* 402 U.S. at 30-31, 91 S.Ct. at 1283; *United States v. Texas Educ. Agency*, 532 F.2d 380 (5th Cir.1976), *cert. denied*, 443 U.S. 915, 99 S.Ct. 3106, 61 L.Ed.2d 879 (1979). As we observed in *Rapides I*, the acceptable length and time of travel will perforce vary with the age of the children and the risk posed to their health. 646 F.2d at 939.

To buttress their contention that the court's plan would impose an excessive burden on Forest Hill K-3 students, the intervenors offered evidence that: (1) some children would travel approximately one hour each direction, (2) buses traveling between Forest Hill and Lecompte must traverse a railroad track, and (3) the Forest Hill school embodied the most treasured characteristics and qualities of the surrounding community. Photographs were offered to show the condition of the Forest Hill school buildings.

We are impressed with the sincerity and depth of feeling displayed by the Forest Hill parents. The record attests to the fine quality of the citizenship of these intervenors. They are law-abiding and supportive of our Constitution and laws. Balancing the equities when dealing with their small children is a particularly arduous task. Our painstaking review of the record nevertheless discloses no evidence to contradict the district court's finding, with respect to the children residing within 2.5 miles of the heart of Forest Hill or along the highway to Lecompte,[10] that "the burden of busing others into Forest Hill is far greater than busing Forest Hill students to Lecompte.

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[10] The intervenors attack the court's inclusion in its decree of the estimated 50 students who live in the Mill Creek, Bennett Bay and Blue Lake Road areas, to the west and south of Forest Hill. The government concedes that "the time and distance of busing these students would be considerable." As intervenors point out, no findings were made by the district court on the transportation burden, if any, sustained by these children. Forest Hill's evidence in this regard affords us little assistance, inasmuch as the bus drivers' trip tickets do not distinguish between elementary, junior high and

The proposals advanced by the school board and intervenors contemplate the transportation of black students from Lecompte to Forest Hill over the same highway as is claimed to be dangerous and overly long for the transportation of Forest Hill students to Lecompte. We are not persuaded that the burdens and risks of travel vary depending on the direction of travel and the complexion of the travelers.

We note further, as did the district court, that the older students have been riding the school bus to Lecompte for a number of years. High School students from the Forest Hill area have been bused to Lecompte voluntarily since the 1966-67 school year, and seventh and eighth graders must also now be bused from Forest Hill. The burden of busing the elementary school children is minimized by the previous establishment of busing for the older children. As the district court stated: "The elementary students simply get on buses already loaded with their older brothers and sisters."

Finally, the district court found Carter Raymond and Lecompte Elementary to be structurally sound and capable of accom. odating all students assigned.[11] Accordingly, upon consideration of all of the foregoing factors, we must concur in

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high school children, all of whom ride the same buses. Nor does the map submitted provide a sufficient premise for evaluating the nature and extent of the burden imposed on the children vis-a-vis either their age, the putative health risks or any potentially deleterious effects upon the educational process. The testimony on this issue served only to describe the routes traveled by children living in the outlying environs of Forest Hill. In light of the paucity of evidence pertaining to the time and distance of travel for younger children residing in the foregoing areas, we cannot assess the equities of their assimilation in the court's tripartite desegregation program. Upon proper motion, however, the court may wish to reconsider its assignment of students from these remote localities to Lecompte schools.

[11] According to the intervenors, the district court's inspection of the Lecompte schools was an abuse of discretion. We are not persuaded. Forest Hill residents do not dispute the court's findings as to the adequacy of these schools, which findings are in fact corroborated by the proffered photographs. If Lecompte Elementary and Lincoln Williams were in disrepair or presented a palpable risk of harm, we are certain that the school board would not subject children to such hazards. *Lemon v. Bossier Parish School Board.*

the district court's judgment that the intervenors' legitimate interest in preserving their neighborhood school must, in this instance, yield to the constitutional requirement that all children in the parish, black and white, share in a desegregated educational experience.

We thus conclude that the district court's decision to assign Forest Hill students to the Lecompte schools and to close Forest Hill School was a reasonable exercise of its equitable discretion. The record in this case supports the court's conviction that of all the proposals offered, its plan can best be expected to achieve the mandated conversion to a unitary system.

AFFIRMED.

CLARK, Chief Judge, dissenting:

I respectfully dissent. The mandate of this court's prior panel, 646 F.2d 925, controls this panel just as it did the district court. Although the majority starts its reasoning by quoting a crucial paragraph from that mandate, it has not applied its letter or spirit to the district court's order on remand which is before us for review today.

Specifically, the prior mandate vacated the order closing the Lincoln Williams and Forest Hill schools and required the district court to: (1) give regard to neighborhood considerations for rural schools, 646 F.2d at 944; (2) take into consideration such equitable factors as "[t]he length and time of travel . . . in light of the age of the children, and the risk to health and probable impingement on the educational process," *id.* at 939; (3) only employ the "harsh remedy" of closing rural schools "if absolutely necessary to achieve the goal of a unitary system after all other reasonable alternatives have been explored;" *id.* at 940; (4) "explicitly state its justification for ordering a school closed" *id.* at 940; and (5) reexamine its closing of Lincoln Williams and Forest Hill schools "in light of the full range of mitigating equitable considerations" (*id.* at 941) because the district court's findings that Lincoln Williams had a predominance of black pupils and that Lecompte Elementary was older

than Forest Hill but was "much the better location for purposes of integration" formed an insufficient basis to sustain the closings, *id.* at 940.

On remand, the district court wrote a new, longer opinion in which it changed and added words but I cannot find in them even one change of any substance to show that court complied with these commands.

On this appeal the majority has impermissibly substituted its present approval for the prior panel's rejection of the same schools closing edict on the same basic district court findings and erroneous premises. The net result is that this court has now affirmed a district court order that failed to tailor its remedy to the constitutional wrong identified in this case. The consequences are that innocents suffer and the law is brought into disrepute. The judgment should have been vacated again and the cause remanded, this time with explicit directions to limit relief to an appropriate remedy.

Of course a court's equitable powers to remedy past constitutional wrongs are very broad. *Swann v. Charlotte-Mecklenburg Bd. of Education*, 402 U.S. 1, 15, 91 S.Ct. 1267, 1275-76, 28 L.Ed.2d 554 (1971). Of course all reasonable methods to achieve this end are available. *North Carolina State Bd. of Education v. Swann*, 402 U.S. 43, 46, 91 S.Ct. 1284, 1286, 28 L.Ed.2d 586 (1971). These are basic premises of school desegregation law. The Supreme Court and this court have often held that courts pursuing this goal may bus children, reshuffle faculty, cluster, pair, rezone and close schools. But a court's powers in this type of case are not unlimited. Rather, they are confined to proper objectives. In the case at bar, the court's task was not, as it declared, to achieve an integrated student body in every school, or even to remedy every problem of racial imbalance that may exist within the school system. *Swann, supra* 402 U.S. at 24, 91 S.Ct. at 1280. Rather, it was limited to eradicating segregation cause [*sic*] by past school board practices. *Ross v. Houston Independent School District*, 699 F.2d 218, 227-28 (5th Cir.1983). In school desegregation cases the court's unnatural role becomes that of

a super school board and temporary school administrator. It is a role which must be played with circumspection and care for the damage which overbroad remedial bans do to children, parents and communities who have offended no one.

The existence of great power does not permit its fullest exercise in every case. Because the court has limited objectives and a limited role, the scope of the remedy it devises must be tailored to fit the nature and extent of the constitutional violation found. *Hills v. Gautreaux*, 425 U.S. 284, 293-94, 96 S.Ct. 1538, 1544-45, 47 L.Ed.2d 792 (1976). The prior panel mandate required the district court to reexamine that portion of its order closing Lincoln Williams and Forest Hill in light of the full range of mitigating equitable circumstances it described. It required the district court, not this appellate court, to explore all other reasonable alternatives before it reinstated the "harsh remedy" of "closing a facility built and maintained at the expense of local taxpayers." Not a single one of the "full range of mitigating, equitable circumstances" (and there were many) required to be considered was discussed or distinguished or applied. The district court really did no more than put the wine of new words in the old skin of school closings because it saw no other remedy to integrate Lincoln Williams.

When the district court reordered the closing of the Forest Hill and Lincoln Williams schools, these two communities lost their only schools. Children from both communities must now be bussed many miles from their homes. Expert evidence placed in this record on remand established that closing a town's only school, especially one located in a small settlement, traumatizes the whole town. The greatest costs are to the families that include school-aged children, but hurtful repercussions extend throughout the community.

Parents in both "burdened" communities, one predominately white, the other predominately black, asked the court to leave their schools open, at least for their youngest children. Their petitions were ignored. These children, ranging in age from kindergarten through early elementary grades, must rise early, board buses, drive past their community school houses

and go into a distant town and then reverse the journey in the evenings. Some will spend two hours a day on the school bus. Their names are not recorded. Their family situations are not detailed. Their needs, their hopes, their rights are dashed without discussion. If a five-year-old gets sick or forgets her coat or her lunch and wants to contact her parents she must make a long distance telephone call to reach her home. It seems small solace for the majority to suggest that some such children may have high school-aged siblings who will be on the bus with them part of the way. Much more remarkable, I think, is the fact that the children, parents, and communities who are so damaged did not cause or contribute in any way to the conceived constitutional wrong the court sought to remedy. Indeed, the district court and the majority both state that the people of Forest Hill have been altogether law-abiding and free of guilt.

Why then have they been put to this grief? For integration, the district court said. It saw no other reasonable prospect to integrate Lincoln Williams because its prior order pairing Lincoln Williams had been defeated by white flight. But the Cheneyville students and parents who now plead to keep their school did not leave it. Why must their plea to keep their school open go unheeded? At the opposite base of this triangle, the pleas of the Forest Hill students and parents who also want to keep their school were equally ignored. Why? Why must the "harsh remedy" be imposed on them without weighing the "full range of mitigating equitable considerations" they brought forward? "[T]o effect an equitable distribution of the burden" the majority says. I can see that the punishment inflicted on the citizens of Forest Hill is comparable to the punishment inflicted on Cheneyville, but I cannot detect a spark of equity in heaping the coals of sorrow on the heads of either community. The record shows without contradition that the Forest Hill area became predominantly white because of a change in the community's economic-industrial conditions which had nothing to do with schools. *Cf. Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 436, 96 S.Ct. 2697, 2704-05, 49

L.Ed.2d 599 (1967). Neither the Lincoln Williams nor the Forest Hill school was constructed or maintained to evade desegregation. The school board has never used either school for racial purposes. The punishment of these innocents fits no crime of their or the district's making.

For eighteen years this school district has been under the injunctive edicts of federal courts. It has not violated one. The fault for any perceived shortcomings in the district, lies at the doorstep of the federal courts, not the school district, its staff or patrons. Moreover, courts delude no one but themselves when in the name of justice they make wholesale adjustments to the intimate, individual and differing rights of hundreds of citizens. If this latest edict proves nothing else, it will prove again that courts are a totally inadequate institution to resolve with broad injunctions the numerous, complex, interrelated rights which comprise a "school case."

The district court accepted as its "principal purpose . . . the adoption of a plan which achieves the greatest amount of integration." This was wrong. Integration is not a constitutional command. One race schools which are not the result of past segregation do not keep a school district from being unitary. *Swann, supra*, 402 U.S. at 25-26, 91 S.Ct. at 1280-81. This false premise led the district court to close Lincoln Williams to its patrons. As errors are prone to do, it, in turn, caused the further error of closing Forest Hill to bring misery company. The two wrongs do not make a right.

More's the pity. Even accepting the district court's erroneous premise of a duty to integrate, its plan for achieving theoretical integration was not the best remedy available. A less disruptive solution was identified by the parties. Under the school board's third plan, children from predominantly black zones in the Lecompte areas could have been bussed to Forest Hill. This plan could have been supplemented in the manner suggested by a group of Cheneyville citizens who proposed that the Lecompte elementary schools be closed. If this approach had been used, that community could have retained a seventh and eighth grade school and four-year high

school for their own children as well as those from Cheneyville and Forest Hill. Children from predominantly white areas in the Lecompte region could have been bussed to Lincoln Williams. Instead of closing the only schools in two communities, just one of the three Lecompte area schools would have been closed. Carter Raymond and Lecompte High could have continued to serve the area. Instead of bussing children from two communities, only children from one area would have had to be bussed. As the court aptly observed, the road mileage between these communities is no greater in one direction than the other. Statistically, the desired racial mixture could have been achieved in both schools.

The assumption of the district court and the majority that there was no alternative to closing Lincoln Williams was erroneous. The threat of flight by white children to be bussed from Lecompte to Lincoln Williams does not justify rejection of this plan any more than the threat that pupils from Forest Hill won't go to Lecompte Elementary or the threat that blacks from Cheneyville will not follow the court's plan. Of course the court was not required to ignore a likelihood of pupil flight. It had happened before. In a free country it may happen again. A court's school order can mandate county officials in the performance of their duties, it can map zone boundaries and it can fence in schools, but it cannot command a single student to go to a single school for a single day.

But just as *United States v. Scotland Neck City Bd. of Education*, 407 U.S. 484, 491, 92 S.Ct. 2214, 2218, 33 L.Ed.2d 75 (1972) established that flight cannot be accepted as a reason for achieving anything less than complete uprooting of the dual school system, it cannot be accepted as a reason for reaching past the wrong to be remedied when a less disruptive, equally effective plan is available. It cannot do so because a remedy that exceeds the wrong to be righted violates clear precedent of the Supreme Court and this court. It cannot do so here because the district court's order disobeys the controlling mandate of the prior panel. The court did not demonstrate that its plan was more likely to be effective than the possible plan that

would close only one of Lecompte's schools. Indeed, the record indicates quite to the contrary.

In thirteen years on this court I have participated in the affirmance of a number of public school desegregation plans. Most have been, as most are, successful in theory only. I nevertheless remain readily obedient to my obligation to follow precedent. But that does not keep me from knowing what everyone knows — zones, pairs, clusters and bussing are workable remedies for school desegregation only in extreme cases. When the problem is reduced to dealing with people of good will who have done no wrong, maximum use of the neighborhood school is the key to assuring equal educational opportunity. That equality of opportunity is the constitutional lodestar. In some cases, precedent and prior school district actions will proscribe the maximum preservation of neighborhood schools. This is clearly not such a case. The prior panel established that the district court should have followed its mandate. So should we.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 81-3462

D. C. Docket No. CA-10,946

VIRGIE LEE VALLEY, ET AL.,
PLAINTIFFS-APPELLEES,

UNITED STATES OF AMERICA,
INTERVENOR-APPELLEE,

versus

RAPIDES PARISH SCHOOL BOARD, ET AL.,
DEFENDANTS-APPELLANTS,
AND
CLYDE HOLLOWAY, ET AL.,
INTERVENORS-APPELLANTS.

Appeal from the United States District Court for the Western District of Louisiana

Before CLARK, Chief Judge, POLITZ and RANDALL, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED that appellants pay to appellees the costs on appeal, to be taxed by the Clerk of this Court.

March 30, 1983

CLARK, Chief Judge, dissenting.

ISSUED AS MANDATE: JUN 6 1983

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 81-3462

VIRGIE LEE VALLEY, ET AL.,
PLAINTIFFS-APPELLEES,

UNITED STATES OF AMERICA,
INTERVENOR-APPELLEE,

v.

RAPIDES PARISH SCHOOL BOARD,
ET AL., DEFENDANTS-APPELLANTS,
AND
CLYDE HOLLOWAY, ET AL.,
INTERVENORS-APPELLANTS.

[April 29, 1983]

Appeals from the United States District Court for the Western District of Louisiana.

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion March 30, 5 Cir., 1983, 702 F.2d 1221).

Before CLARK, Chief Judge, POLITZ and RANDALL, Circuit Judges.

PER CURIAM:

The petition for Rehearing of intervenors-appellants, Clyde Holloway, et al., is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal

Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Suggestion for Rehearing En Banc is DENIED.

CLARK, Chief Judge.

For the reasons stated in my dissent to the panel opinion, I dissent from the denial of rehearing.

APPENDIX D

VIRGIE LEE VALLEY, ET AL.,
PLAINTIFFS-APPELLEES,

UNITED STATES OF AMERICA,
INTERVENOR-APPELLEE,

v.

RAPIDES PARISH SCHOOL BOARD, ET AL.,
DEFENDANTS-APPELLANTS,

AND

CLYDE HOLLOWAY, ET AL.,
INTERVENORS-APPELLANTS.

No. 81-3462.

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT.

May 26, 1983.

Appeals from the United States District Court for the Western District of Louisiana; Nauman S. Scott, Judge.

ON PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

(Opinion March 30, 5 Cir., 1983, 702 F.2d 1221)

Before CLARK, Chief Judge, POLITZ and RANDALL, Circuit Judges.

PER CURIAM:

The Petition for Rehearing of Rapides Parish School Board, et al. is denied, 702 F.2d 1221 and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Suggestion for Rehearing En Banc is denied.

CLARK, Chief Judge:

For the reasons stated in my dissent to the panel opinion, I dissent from the denial of rehearing.

APPENDIX E

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA

JULY 22, 1981

No. 10,946

VIRGIE LEE VALLEY, ET AL.

v.

RAPIDES PARISH SCHOOL BOARD

Before NAUMAN S. SCOTT, Chief United States District Judge.

By decree dated May 18, 1981, our judgment of August 6, 1980 was affirmed in part and remanded in part. The only matter for consideration under the remand is that portion of the student assignment plan covering schools in Wards 2 and 3 (Group V area in the plan) having the following student membership as of May 31, 1980.

PUPIL MEMBERSHIP AS OF MAY 31, 1980

SCHOOLS	PUPILS				TOTALS
	B	%	W	%	
Forest Hill Elem. K-8	26	(8.3)	285	(91.7)	311
Lecompte Elem. K-4	230	(61.5)	144	(38.5)	374
Poland High K-12	30	(9.6)	281	(90.4)	311
Rapides High 10-12	138	(44.2)	174	(55.8)	312
Carter Raymond Jr. High 5-9	218	(62.1)	133	(37.9)	351
Lincoln Williams Elem. K-8	185	(92.9)	14	(7.1)	199
TOTALS	827	(45.5)	1031	(54.5)	1858

The combined student population of this area in the 1979-80 school year was as follows:

Lecompte Area (Group V)

	B		W		TOTAL
Elementary K-6	468	(45.5%)	561	(54.5%)	1,029
Jr. High 7-8	142	(47.0%)	160	(53.0%)	302
High 9-12	217	(41.2%)	310	(58.8%)	527
TOTALS	827	(45.5%)	1031	(55.5%)	1,858

In remanding the court instructed that:

> "We cannot lend our sanction so easily, however, to those portions of the plan involving pupils and facilities in Wards 3 and 4. Here, as we have described, the district court elected to close a predominantly white rural school, Forest Hill, and a predominantly black school, Lincoln Williams, equidistant in different directions from the town of Lecompte; and to transfer their pupils to Lecompte schools. As far as we can determine, the only justification for closing Lincoln Williams was its predominance of black pupils. The court admitted that Forest Hill is more modern than Lecompte Elementary, but described the latter as having 'much the better location for purposes of integration,' in terms of distance for busing of reassigned pupils. Alternatives are only sparingly mentioned.
>
> "These findings are an insufficient factual basis on which to approve the closing of Forest Hill and Lincoln Williams. Equally effective alternatives may exist which would avoid the closing of a modern facility and the intercommunity transfer of kindergarten pupils. These should be explored on remand and, if the district court adheres to its present plan, specific reasons for their rejection should be given. We cannot ignore the district court's disregard of neighborhood considerations for rural schools in this context, particularly where K-2 students in Alexandria were spared transfer to the point that three schools remain virtually all-black. Specific desegregation measures in southeastern Rapides Parish should be re-examined in light of the full range of mitigating equitable considerations.[1]

[1] Since our reasons for denying intervention by Forest Hill residents were

The area served by the Group V schools, outlined in yellow, Exhibit C26a, contains in the school year of 1979-80 six operating schools. The high school students in the Poland district attended Poland K-12. Those students from the rest of the area, Cheneyville, Forest Hill and Lecompte school districts, Exhibit C26b attended Carter Raymond Junior High 5-9 in the ninth grade and Rapides High 10-12. The Junior High and Elementary students attended schools in their own districts at Lincoln Williams K-8, Forest Hill K-8, Carter C. Raymond 5-9 and Lecompte Elementary K-4. Lecompte (pop. 1518) is in the very center of this area, being 11.0 miles from Woodworth (pop. 409); 9.7 miles from Forest Hill (pop. 370); 13.3 miles from Poland (pop. 0), and 9.1 miles from Cheneyville (pop. 1082), Exhibits C2 and C26a-c. It would appear from the map, Exhibit C26a, that the populated area around LSU-A, north of Lecompte on U. S. Highway 71 is about 8 or 8½ miles. Three highways extend south from Alexandria through this area: Highway 1 extending through the Poland district, Exhibit 26b, has a student population over 90% white; U. S. Highway 165 extending south through the Forest Hill district has a white student population of over 90%; 771 (93.24%) of the 827 black students in the area attended the schools located along U. S. Highway 71 at Lecompte and Cheneyville.

There has been a gradual decline of student population at Cheneyville area (Cheneyville formerly had a white high school); and an almost complete exodus of white students from Lincoln Williams after the "white school" was integrated with Lincoln Williams in 1975. Poland is the only majority white school district accessible to Lincoln Williams. There was absolutely no likelihood that these students would attend Lincoln Williams when the whites in the Lincoln Williams district had already refused to do so. It was our finding that there was no reasonable prospect that Lincoln Williams could be integrated

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no longer viable, and since any alternatives offered by them would aid us in the resolution of the issue remanded, we ordered that the intervention now be allowed. Intervenors have submitted alternatives and have participated in the hearing of June 30, 1981.

by clustering or pairing. Consequently we determined that Lincoln Williams must be closed.

Rapides High School opened at the commencement of the 1966-67 school year. As originally contemplated it was to serve as the high school for the entire area. However, the Poland district opted out and it has served since the 1966-67 school year as a consolidated school for the remaining three districts. Prior to the 1980-81 school year the ninth grade from these same three districts had attended Carter C. Raymond in Lecompte. We personally inspected all of the schools involved and determined that there were sufficient facilities, classroom and otherwise, to accommodate all the students in the area in the schools located in Lecompte. Lecompte was centrally located, had radiating bus routes, many of which were already in operation. This would equalize the length and duration of bus routes as much as possible. Consequently we found that the assignment of all students to the Lecompte schools offered the best and the most reasonable prospect of successful integration in the area. Therefore our tentative plan published July 3, 1980 provided:

	1979-80		1980-81	
GROUP V	W	B	W	B
Lecompte Elementary (K-2)	144	230 (61.5%)	231	211 (47.7%)
C. Raymond Jr. High (3-8)	133	218 (62.1%)	477	374 (43.9%)
Rapides High (9-12)	174	138 (44.2%)	310	217 (41.1%)

In our order of July 3, 1980 we requested alternatives to the tentative plan and received only three affecting the schools in Wards 2 and 3.[2] Information in these three alternatives was

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[2] See Exhibits E, F, and G attached to the defendant Board's filing of July 28, 1980.

Exhibit E referred to the history and the physical facilities at Forest Hill, but gave no suggestions regarding integration.

However, we were impressed with the information contained in Exhibits F and G, principally the information related to possible bus congestion around Lecompte Elementary and Carter C. Raymond and the over-burden of facilities other than classrooms if the number of students assigned to these schools were not reduced and assigned elsewhere, perhaps as suggested in Exhibit G.

seriously considered and we felt compelled to make a more detailed personal inspection of these schools, particularly Lecompte Elementary and Carter C. Raymond.[3] Our re-examination of Carter C. Raymond confirmed its adequate classroom capacity and confirmed also that it was overbuilt and had some limitations of bus access. The bus access limitations would be shared to a much smaller degree by Lecompte Elementary, located only a block away. We concluded that the play area and other non-classroom facilities in Carter C. Raymond were insufficient to accommodate the number of students assigned in our tentative plan. Consequently our tentative plan had to be revised.

However the problem was somewhat different from that originally addressed by us in our tentative plan. Most important was the fact that we had already accepted an alternate plan for Jones Street Junior High School in Alexandria (Ward 1 - Exhibit C26a) assigning the 7-8 grades in the Poland district to Jones Street. This assignment was absolutely essential to the successful integration of Jones Street. At the meeting of August 1, 1981[4] there was no protest to the assignment of high school students to Rapides High School. We agreed with suggestion in Exhibit F that the population of Carter C. Raymond be reduced, and with the suggestion in Exhibit G that one school in addition to Lincoln Williams be closed.

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[3] Both of these schools have been majority black for some period of time, consequently had not received the public tax support enjoyed by Poland and Forest Hill; however Rapides High School provides irrefutable evidence that they will receive such support if attended by whites as provided in our final plan. Carter C. Raymond is a modern, structurally sound installation and has all the facilities necessary for K-12 school. It has always been identified as the black school. Lecompte Elementary was formally the white high school and is located only a block from Carter C. Raymond. Structurally, it is probably sounder than any of the other schools but, being a three story building it is not as modern as the other schools. It is however beautifully maintained and more than adequate for an elementary school, Exhibits Forest Hill 5, 7 and 8.

[4] See Minute Entry of District Court forwarded to the Court of Appeals November 5, 1980.

We determine first that Poland should remain open as a K-6 school. Poland's grades 7-12 had already been assigned elsewhere as outlined above. Cheneyville is much closer to Poland than it is to Forest Hill. By assigning to Poland that portion of Lincoln Williams students residing east of Highway 181, Exhibit 26d, Poland's projected black ratio increased from 9.6% to 47.7%. This meant that the remaining Lincoln Williams students, those residing west of Highway 181 and grades 7-8 students residing east of Highway 181, would travel to Lecompte or through Lecompte to Forest Hill to attend school. There is no highway communication between the Lecompte area and Forest Hill so that all students who might be assigned to Forest Hill from the Cheneyville area would have to pass by the schools in Lecompte and bus an additional 9 miles in order to reach Forest Hill, Exhibit C26b & d.

The next matter which we have for determination after the examination of the alternatives submitted by the School Board was whether the remaining Junior High and Elementary students assigned to the Lecompte schools under our tentative plans should continue to attend those schools as contemplated or whether a number of those students should be assigned to Forest Hill and a Lecompte school closed. Although Lecompte Elementary had been a white K-12 school, it had been majority black for a number of years. Carter C. Raymond had always been a school for black students. The record shows that Lecompte Elementary and Carter C. Raymond were 61.5% and 62.1% black in the school year of 1979-80. We had already determined that Aaron Elementary in Alexandria and Lincoln Williams Elementary in Cheneyville, 100% and 92.9% black respectively, had to be closed for purposes of integration. It was not fair to the black community nor legally proper that only identifiably black schools be closed for purposes of integration. Thus neither Lecompte nor Carter C. Raymond should be closed except as an absolute necessity, *Lee v. Macon County Board of Education*, 448 F.2d 746 (5th Cir.1971), *Mims v. Duval County School Board*, 447 F.2d 1330 (5th Cir.1971), and *Ellis v. Board of Public Instruction of Orange*

County, Florida, 465 F.2d 878 (5th Cir.1972). There was no such justification here.

All of the area north and east of Indian Creek Lake to the Alexandria district on the north, the Poland district on the east and highway 181 and the Evangeline Parish line on the south would have to travel through Lecompte (or an intersection one-half mile west of Lecompte) and then begin an additional 9 miles bussing to arrive at Forest Hill, Exhibit C26d. The seventh and eighth grade Cheneyville students east of Highway 181 would have to go even further, Exhibit C26d. On the other hand there are practically no students living in the Forest Hill district west of Forest Hill city limits and practically none in the Lecompte district living in the bombing range area west of Woodworth. Thus Forest Hill is on the periphery of an area made up of Cheneyville, Forest Hill, Woodworth, LSU-A area and Lecompte, Exhibit C26b. Lecompte, on the other hand, is in the center. This was recognized by all these communities when they organized a consolidated school district for the purpose of constructing Rapides High School and locating that school in Lecompte. High School students from the Forest Hill area have been bussing voluntarily to Lecompte since the 1966-67 school year. It is certain that seventh and eighth grade students must attend the schools in Lecompte because of the excessive distance involved in assigning Cheneyville students to any other location, Exhibit C26b & d. Since the Forest Hill students are concentrated in the immediate Forest Hill area and on the road between Forest Hill and Lecompte the bussing burden on them would be minimal. The burden would be further minimized by the fact that Forest Hill grades 9-12 have been bussing to Lecompte previously and that grades 7-8 must also be assigned there. The elementary students would simply get on busses already loaded with their older brothers and sisters. Under these circumstances we found that the evidence as well as the law dictated that all Forest Hill students should be assigned to the schools in Lecompte, as follows:

GROUP V	1979-80 W	1979-80 B	1980-81 W	1980-81 B	T
Poland Elementary (K-6)	281	30 (9.6%)	150	137 (47.7%)	287
Lecompte Elementary (K-3)	144	230 (61.5%)	223	185 (45.3%)	408
C. Raymond Jr. High (4-8)	133	218 (62.1%)	282	256 (47.5%)	538
Rapides High (9-12)	174	138 (44.2%)	310	217 (41.1%)	527

After the remand of May 18, 1981 we ordered that the intervention of the Forest Hill residents (Forest Hill) be allowed and ordered the filing of any alternatives to the Court's final plan for the Group V school area. On the date of the evidentiary hearing of June 30, 1981, we received three plans from plaintiff, four from Forest Hill and one from the School Board. We later admitted two additional plans from the School Board. On that date also the plaintiffs disavowed plans filed previously by them on June 11, 1981. Plans were also submitted by concerned citizens of Lecompte. The government submitted no plans, but supported the plan adopted August 6, 1980.

All of the plans submitted have one common fault. None of them proposes a plan for integration. Each of them proposes to keep the 1979-80 schools intact regardless of the burden it might place on children in other schools and without any regard for the prospects of successful integration of the schools in the area.

We have considered plaintiffs' plans and have eliminated the first and second alternatives which suggest reopening Lincoln Williams as an integrated school in certain grades for the whole area. There is no reason to believe that students from Forest Hill, Woodworth, the LSU-A region and Poland would be more likely to attend Lincoln Williams than those in the Cheneyville area which have refused to attend in the past. Plaintiffs' first and principal suggestion is that Lincoln Williams and Forest Hill remain racially identifiable K-3 schools, as follows:

	B	W	Total
Lincoln Williams (K-3)	95	11	106
Forest Hill (K-3)	8	124	132

We assume that plaintiffs are attempting to show a parallel to the three racially identifiable schools approved by the Court of Appeals in this proceeding in its decree of May 18, 1981. We cannot allow K-3 schools but if the proposal were restricted to grades K-2 as was the case in those schools and as suggested in *Lee v. Macon County Board of Education*, 616 F.2d 805 (5th Cir.1980), we might consider this alternative. If reduced to K-2 Lincoln Williams would contain only 87 students and Forest Hill only 104, well below the 117 minimum necessary to qualify for the assignment of teachers under the laws and regulations of the State of Louisiana, Exhibit C27. Plaintiffs' alternatives must be rejected.

Forest Hill submitted four alternatives, none of which make any reference to student populations in any of the schools. "There is no statistical information from which it can be determined whether there is any potential whatsoever in any of the plans for successful integration." The one common denominator in all the plans is that Forest Hill be K-8 as it was during the school year 1979-80. Each plan provides therefore that not one Forest Hill K-8 student will be bussed out of his own district. Plans 1 and 3 provide in addition that no one will be bussed into the Forest Hill school. Plan 2 proposes segregated bussing, the meticulous individual selection of 45 black students from the area of Woodworth to assure that Forest Hill will remain clear of any integrating effort. Woodworth is the demographic equivalent of Forest Hill. It has always been in the Lecompte area and is a principal source of white students attending the Lecompte schools. We doubt seriously if there are 15 black students in the Woodworth area. If they do exist there is nothing in the record to show it. If they did exist we would not allow the meticulous individual selection necessary to assure segregated bussing into Forest Hill. Plan 4, like Plans 1 and 2, provides that Lincoln Williams be K-8. This robs that plan of any significant integrative effect. Plan 4, like Plans 1, 2 and 3, must be rejected.

School Board Plan No. 1 proposes the selection and segregated bussing to Forest Hill of black students attending grades

4-8 in Lecompte and Carter C. Raymond. This is rejected for the same reasons outlined by us in considering the Forest Hill Plan No. 2. The Board Plans Nos. 2 and 3 are alike in that they provide for K-5 schools at Forest Hill and Lecompte, a 6-8 school at Carter C. Raymond, a K-6 school at Poland, and the closing of Lincoln Williams. Under Plan 2 Forest Hill (K-5) is 38% black and Lecompte (K-5) is 53% black. Under Plan 3 Forest Hill (K-5) is 45% black and Lecompte (K-5) is 48% black. We find no fault with the result. We do object to the method. Plan 2 zones into Forest Hill (K-5) a 100% black area adjacent to and around Lecompte Elementary which is also to remain an operating K-5 school. Plan 3 does the same thing except that the zone is slightly enlarged. Students in a one-race zone can be bussed for purposes of integration but they should not be bussed to a K-5 zone when a K-5 school exists in their own zone. The Board's plans must be rejected.

Concerned Citizens of Lecompte filed four proposals. These proposals are deficient and hard to evaluate because there are not supporting statistics regarding the number of students and the resulting students ratios. Proposal No. 1 suggests that grades 6, 7 and 8 in Poland, Cheneyville, Forest Hill and Lecompte attend Carter C. Raymond, that Poland be a K-5 school for Poland and Cheneyville and Lecompte Elementary be a K-5 school for Forest Hill and Lecompte. The proposal for 7-8 is already in effect except for seventh and eighth graders in the Poland area who attend Jones Street Junior High School. We cannot jeopardize the success already realized by Jones Street. Actually, many of these students, those near the city limits of Alexandria, live closer to Jones Street than they do to Rapides High School. We do intend, however, to modify the Jones Street zone, assigning those students fartherest [*sic*] from Jones Street (Echo area) to Carter C. Raymond. The school staff informs us that this will cut at least ½ hour from the bussing route into Jones Street. We have already determined that Poland could not maintain a reasonable black/white ratio if it took all the K-5 students from Lincoln Williams.

We have adopted and put into effect Proposal 2 except that

Lecompte Primary is a K-3 school instead of a K-4. This proposal also suggests that 7-8 students in Cheneyville attend Carter C. Raymond. The plan now in effect provides for this and these students have been assigned to Carter C. Raymond since the beginning of the 1980-81 school year.

Proposal 3 has the same deficiency regarding Poland as Proposal 1 and Proposal 4 involves unacceptable bussing. There are only 23 students living west of Forest Hill, Forest Hill Exhibit 13. This covers all 13 grades. No more than one-fourth should be in the 6-9 grades. Because of bussing distances, any plan which busses students from the entire Cheneyville, Forest Hill, Lecompte, Poland area must bus to Lecompte just as the Rapides High students do. This proposal is also rejected.

Our principle purpose throughout was the adoption of a plan which achieves the greatest amount of integration with a reasonably assured prospect of success. We find that the plan adopted August 6, 1980, including the area serviced by schools in Group V thereof, to have been a success. In some instances such as the Sixth Grade Centers and Jones Street Junior High School the success was spectacular. The following figures tell the story of Group V, Court Exhibit 25(4):

EXPERIENCE TABLE

	1979-80 (actual)		1980-81 (projected)		1980-81 (actual 9/18/81)	
GROUP V	B%	W%	B%	W%	B%	W%
Poland Elem. (K-6)	9.6	90.4	47.7	52.3	37.5	62.5
Lecompte Elem. (K-3)	61.5	38.5	45.3	54.7	62.6	37.4
C. Raymond (4-8)	62.1	37.9	47.5	52.5	60.0	40.0
Rapides High (9-12)	44.2	55.8	41.1	58.9	43.8	56.2
Lincoln Williams (K-8)	92.9	7.1	Closed		Closed	
Forest Hill (K-8)	8.3	91.7	Closed		Closed	

Although projected percentages were not realized in Group V, such projections could hardly have been realized in the atmosphere in which this plan was implemented. A national election in which bussing was the major issue; every campaigning

politician blasting the bussing procedure; a state court enjoining implementation, particularly as it applied to Forest Hill; Clyde Holloway, leader of the Forest Hill intervenors, running for Congress on the sole issue, and national publicity creating an incendiary theater from August 6, 1980 until the end of January 1981. In spite of the fact that they absorbed more than a third of the black students formerly attending Lincoln Williams, Lecompte Elementary's black percentage showed only a slight increase: 61.5% in 1979-80 to 62.6%. This in spite of the boycott by students from Forest Hill. Under those very same circumstances Carter Raymond's 62.1% of black students in 1979-80 actually was reduced to 60%. Poland's 9.6% black to 90.4% white ratio was adjusted to 37.5% black against 62.5% white. Rapides High which was already integrated at 44.2% black was reduced slightly to 43.8% black. Lincoln Williams which was 92.9% black was eliminated and its students absorbed in the schools named above. The 91.7% white school at Forest Hill was closed and most of its students attended private academies. White flight has occurred in the Group V area, School Board Exhibit G attachments. We have been informed by the School Board staff that 47 of these students have been attracted back to the public school system in the year 1980-81, Exhibit 28.

We find that there is great prospect for success during the 1981-82 school year and the years that follow.

1. The people of Forest Hill are conscientious and law abiding. They have taken their issue to court as they had every right to do. The Court of Appeals did not reverse, it only remanded for more specific reasons which we, the trial court, have now supplied.

2. The Forest Hill intervention has now been allowed. They have been given the opportunity to suggest alternatives to the court's plan of August 6, 1980. These suggested alternatives were unsupported by evidence and showed only a desire to maintain the status quo.

3. The injunction against Forest Hill defendants has now been modified so that the Forest Hill school premises may be

used by the citizens of that community for any purpose except the conduct of a school.[5]

4. Nearly all of the student population of the Forest Hill school live within two and a half miles of the center of Forest Hill or in the area between Lecompte and Forest Hill. In the school year of 1979-80 there were only about 50 students living outside the restricted area in Forest Hill and between Forest Hill and Lecompte described above. 23 of these lived west of Forest Hill in the Mill Creek area, 18 southeast of Forest Hill in the Bennett Bay area, and 9 southeast of Forest Hill on the Blue Lake Road, Forest Hill Exhibit 13. These considerations, coupled with the fact that Forest Hill High School students have bussed to Lecompte since 1966, makes the closing of Forest Hill inevitable. For reasons shown above, the burden of bussing others into Forest Hill is far greater than bussing Forest Hill students to Lecompte. As we have stated before, Forest Hill residents acknowledged that Lecompte was the educational center of the area when they joined in building Rapides High at that location.

5. We find also that compliance with the plan adopted Au-

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[5] Our injunction of September 22, 1980 enjoining Forest Hill defendants was, as observed by the Court of Appeals, broad. It was our opinion that this breadth was necessary at the time the injunction was issued. Several unaccountably fortuitous events had occurred which allowed Forest Hill defendants to use the school. In case of any action for contempt we did not wish to be confronted that any particular defendant was on the premises for reasons which had no connection with school activities which were actually being conducted on the premises. On the date that the injunction was issued we informed the Forest Hill counsel that we would modify the injunction so as to allow use of the premises for other than school purposes if such defendants would make such application and pledge themselves to use the premises only for non-school purposes. We declared such intent in the opinion attached to that order: "However, it is permissible at any time for any defendant or anyone acting in concert with any of them to make an application for modification of this injunction on proper grounds." Thereafter we reminded counsel on several occasions. For reasons best known to him and his clients, no such application was made until June 12, 1981. We granted the motion and modified the injunction. The school properties can now be used for any public or civic purpose except for conduct of a school.

gust 6, 1980 will be enhanced and encouraged by two amendments to that plan.

a. The time necessary to bus 7-8 grade students from the Echo area at the south end of the Poland district into Jones Street Junior High School in Alexandria is excessive. We are informed that bussing time on that route can be reduced at least one-half hour by excluding that area from the Jones Street Zone E and adding it to Carter Raymond as Zone D, as shown in Exhibit A attached. The effect of this amendment is to reduce the attendance of Jones Street by approximately 14 students and adding that number to Carter C. Raymond.

b. On or before the commencement of the school year 1981-82 a *white principal should be appointed at Carter C. Raymond* and a black principal appointed at Lecompte Elementary.

All alternatives to our final plan for the areas served by Group V have been rejected. The said plan should be amended as set forth in Paragraph 5 immediately above and as amended should be implemented at the commencement of the school year of 1981-82.

DONE AND SIGNED at Alexandria, Louisiana, on this the 22nd day of July, 1981.

/s/ Nauman S. Scott
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA

CIVIL ACTION NO. 10,946

VIRGIE LEE VALLEY, ET AL.

v.

RAPIDES PARISH SCHOOL BOARD

FINAL JUDGMENT

This matter having come on for trial pursuant to remand in Civil Action No. 80-3722 in the United States Court of Appeals for the Fifth Circuit (Unit A) entitled *Virgie Lee Valley, et al, Plaintiff-Appellee, United States of America, Intervenor-Appellee v. Rapides Parish School Board, et al, Defendant-Appellants* dated May 18, 1981, hearing having been had, plans and authorities having been submitted and considered by us, the law and evidence being in favor thereof, it is

ORDERED, ADJUDGED AND DECREED that the plan adopted by us on August 6, 1980 as amended by the Plan (Exhibit A) attached hereto be implemented and made effective on or before the commencement of the 1981-82 school year; it is further

ORDERED, ADJUDGED AND DECREED that we retain jurisdiction in the event of appeal or the expiration of delay for appeal for the purpose of assuring the implementation of the plan adopted by this judgment.

Alexandria, Louisiana, this the 22nd day of July, 1981.

/s/ Nauman S. Scott
United States District Judge

APPENDIX G

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT
UNIT A
MAY 18, 1981

NOS. 80-3722, 80-3776, 80-3855, 80-3988,
80-3008, 81-3013, 81-3033 AND 81-3083.

VIRGIE LEE VALLEY, ET AL.,
PLAINTIFFS-APPELLEES,

v.

RAPIDES PARISH SCHOOL BOARD,
DEFENDANT,

v.

NELSON LABORDE, ET AL.,
INTERVENORS-APPELLANTS,

v.

UNITED STATES OF AMERICA,
INTERVENOR-APPELLEE.

VIRGIE LEE VALLEY, ET AL.,
PLAINTIFFS-APPELLEES,
AND
UNITED STATES OF AMERICA,
INTERVENOR-APPELLEE,

v.

RAPIDES PARISH SCHOOL BOARD,
DEFENDANT,
STATE OF LOUISIANA, ET AL.,
DEFENDANTS-APPELLANTS.

REHEARING DENIED NO. 80-3988
JULY 9, 1981

OPINION ON REHEARING, NO. 80-3722

AUG. 14, 1981
SEE 653 F.2d 941

Appeals from the United States District Court for the Western District of Louisiana.

Before COLEMAN, GARZA and SAM D. JOHNSON, Circuit Judges.

GARZA, Circuit Judge:

Twenty-seven years after *Brown v. Board of Education* and sixteen years after the commencement of this litigation, we are confronted with yet another set of appeals arising from implementation of the command to desegregate public schools in Rapides Parish, Louisiana. The current appeals stem from the district court's response to a Motion for Supplemental Relief filed by the private plaintiffs in 1979. We consolidated them for argument, and now render our decision in each by this opinion.

Though the Rapides Parish School Board was long ago admonished of its continuing duty to accomplish the dismantling of racial duality in pupil and staff assignments, complex and important issues have been raised by the effort to achieve this goal. Is the school system fully unitary? If not, what further relief is required? Are the orders issued below a proper response to the facts of the case and previous directives of this court?

Sadly, these are not the only issues. This case has been unnecessarily complicated by the failure of all parties in interest to adequately aid the district court, as well as by overt interference with and defiance of its orders by certain elements in the community. We are therefore called upon to decide whether additional orders issued by the district court in aid of its jurisdiction and authority were within the permissible bounds of discretion.

BACKGROUND

While Rapides Parish is predominantly rural, it contains one large city, Alexandria. A single school system serves the entire parish. Prior to 1965, the system was classically dual, with one set of schools operated for white pupils and another for blacks.

This litigation was instituted on March 23, 1965, and re-

sulted in the employment of a number of devices to establish a unitary system. Originally, the district court approved a desegregation plan relying on "free transfer" provisions, which remained in effect until 1969. Under its operation, white pupils continued to attend all-white schools and more than 96 percent of black pupils continued to attend all-black schools.

The plaintiffs moved for supplemental relief following the Supreme Court's decision in *Green v. School Board of New Kent County*, 391 U.S. 430, 88 S.Ct. 1698, 20 L.Ed.2d 716 (1968), invalidating a freedom of choice plan which had failed to achieve meaningful desegregation. The district court held that the plan then in effect *did* create a real prospect of dismantling the dual school system. *Conley v. Lake Charles School Board*, 293 F.Supp. 84, 88 (W.D.La. 1968).

We reversed and remanded for the implementation of a new plan. *Hall v. St. Helena Parish School Board*, 417 F.2d 801 (5 Cir. 1969), *cert. denied* 396 U.S. 904, 90 S.Ct. 218, 24 L.Ed.2d 180 (1969). Upon review of the relevant statistical facts, it was held "abundantly clear that freedom of choice as presently constituted and operating . . . does not offer the 'real prospect' contemplated by *Green*." 417 F.2d 801 at 809. Alternative measures were suggested, including "geographic zoning . . . pairing of grades or of schools, educational clusters or parks, discontinuance of use of substandard buildings and premises, rearrangement of transportation routes, consolidation of schools, appropriate location of new construction, and majority-to-minority transfers." *Id.*

Once again, however, there was a disparity between the intended effect of relief and the actual result. In 1969 and 1970, the court below adopted three neighborhood zoning plans, each of which was reversed for failure to present an adequate prospect of dismantling the dual school system.

In July of 1969, the court approved a plan offered by the school board which relied on neighborhood zoning or partial pairing, but left 13 schools over 90 percent black. This court reversed and remanded in *Valley v. Rapides Parish School*

Board, 422 F.2d 814 (5 Cir. 1970), again ordering the formulation of a new plan.

The district court next chose a school board plan which made minimal student assignment changes, citing "the extreme shortness of time confronting the school board." We reversed summarily, remanding the case with "instructions to the district court to implement pendente lite [a plan offered by HEW] . . . or a plan devised by the district court to accomplish a unitary system within the teachings of *Green v. County School Board.*" *Valley v. Rapides Parish School Board*, 423 F.2d 1132, 1133 (5 Cir. 1970).

On remand, the district court adopted its own plan for Wards 1 and 8 of the parish, which encompass the city of Alexandria. (See the map of Rapides Parish attached as an appendix hereto.) The plan assigned pupils in those wards to the schools nearest their homes, and reinstated previous plans for the remaining wards with some modifications. Once again, this court was obliged to partially reverse. In *Valley v. Rapides Parish School Board*, 434 F.2d 144, 145 (5 Cir. 1970), those portions of the order below "which [did] not concern either student assignment in Wards 1 and 8 or the majority-to-minority transfer policy" were affirmed. As for the city wards, the court noted that black pupils accounted for 47 percent of the total enrollment and held:

> Because of the residential dichotomy between Alexandria's black and white citizens, the so-called "neighborhood school plan" adopted by the district court, although admittedly impartial as to race, still leaves 60% of the black students in schools where their race is an approximately 90% or greater majority. Of the twenty-four remaining schools seven remain predominantly negro.
>
> The end result is that neighborhood zoning in Alexandria, Louisiana, leaves the majority of the city's negro students in a virtually segregated school system. *Id.*

The court then set out in detail a plan to remedy the deficiency in eliminating racially identifiable schools, and ordered the district court to implement that plan or one which would

achieve the same result. Notably, it was admonished that "[T]he fact that the plan complies with the requirements for a neighborhood system as enunciated by this court in *Ellis v. Board of Public Instruction of Orange County, Florida*, (5 Cir. 1970), F.2d 203, does not make the system constitutionally palatable unless the plan actually works to achieve integration." *Id.*

Following this remand, a geographic plan for Wards 1, 8 and 9 was devised and implemented. The district court retained jurisdiction. In 1973 and 1974, the United States, as intervenor, moved for supplemental relief. It alleged that enrollments projected under the 1971 plan had not been met, and pointed to the continued existence of racially identifiable schools. The 1973 motion resulted in some adjustments and the 1974 motion was suspended "until further orders of [the] court."

Renewal of litigation leading immediately to these appeals began on August 31, 1979, when the private plaintiffs filed a Motion for Supplemental Relief complaining of the persistent spectre of one-race schools. They further alleged noncompliance with the teacher ratio requirements of *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5 Cir. 1969), and employment discrimination in the hiring of staff and faculty. The government moved to reschedule hearing on its 1974 motion, contending that the same schools which had been all-black or virtually so in 1974 remained segregated in 1979.

Statistical facts supporting the need for further relief were compelling. At the close of the 1979-80 school year, the board operated thirty elementary, seven junior high, and twelve high schools. These were attended by 24,622 pupils, of whom 8,793 (35.7 percent) were black and 15,829 (67.3 percent) were white.[1] 76 percent of the pupils attended school in Alexandria, or in the adjacent communities of Pineville and Tioga in Wards 9 and 10. 74 percent of all black pupils attended Alexandria

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[1] These figures omit the number of pupils attending three special purpose facilities which are not involved in the plan.

schools where they constituted a majority of 56 percent. A comparison of enrollment figures for 1965 when the schools were officially segregated with those for 1980 reveals that almost no progress was made in ten schools, nine in Alexandria and one in the Ward 3 community of Cheneyville.[2]

The matter was heard on April 29 and 30, 1980. The government presented testimony on the continued existence of one-race schools and the plaintiffs' employment discrimination claims. It proposed a plan prepared by its expert, Dr. Gordon Foster, which utilized clustering and pairing to abolish one-race schools in Wards 1, 8, and 9. The plaintiffs endorsed this plan, and called for desegregation of other racially identifiable schools. They offered no plan of their own. The school board stated its opposition to the government plan, maintaining that the system was unitary. It offered no plan.

On June 6, the district court issued a short preliminary opinion, stating:

> It is conceded that there are a number of racially identifiable schools in the Rapides Parish School System. We find from the record that the existence of all of the racially

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[2]

	1965 ENROLLMENT	1980 ENROLLMENT
	% of Black Pupils	% of Black Pupils
ALEXANDRIA		
Aaron Elementary	100	100
Acadian Elementary	1	100
Lincoln Road Elementary	100	99
Lincoln Road Primary		97.7
Peabody Elementary	99.7	100
Silver City Elementary	100	100
South Alexandria Elementary	100	99.5
South Alexandria Primary	100	100
Jones Street Junior High	100	93.9
WARD 3		
Lincoln Williams Elementary	100	92.9

identifiable schools has not been justified as contemplated under *Swann v. Charlotte-Mecklenburg Bd. of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); and that the Rapides Parish School System is not unitary and that additional relief must be granted. *Lee v. Macon City Bd. of Education*, [616] F.2d [805] (5 Cir. 1980).

The court rejected the Foster plan, criticizing it on the ground that it failed to cover the Alexandria metropolitan area, much less the entire system. Notice was served that the court would withdraw its own plan.

That plan was issued on July 3, and the parties were given 15 days to respond with comments or recommendations. After a hearing in the nature of a status conference, the court entered final judgment adopting its plan on August 6, 499 F.Supp. 490 (W.D.La.). The school board was ordered to implement it for the 1980-81 school year, set to commence on August 20.

THE PLAN

The district court opens with a statement of principles. Busing is called "an essential element of our public school systems for many years," which would be used "purposefully and constructively." The court recognized "that neighborhood schools in metropolitan areas should exist but only to the extent that they do not impair or inhibit the establishment of an integrated school system." This recognition was followed by the curious observation that neighborhood schools "do not exist outside of metropolitan areas." The court allowed that it would give "due recognition to physical circumstance and to individual interests," and finally noted that "construction of new school buildings and disposition of old school buildings . . . and sites can substantially affect that development of a unitary system."

The specific remedial orders contained in the plan are aimed at eliminating the Alexandria and Cheneyville one-race schools. Thus, attendance is realigned in the two separate areas, with one school involved in the desegregation of both. Mandatory pupil reassignment orders are coupled with a majority-to-minority transfer provision.

Desegregation of the eight Alexandria area elementary schools bearing a racial stigma was accomplished by clustering all elementary schools in Wards 1, 8, 9, and 10 into four groups, each containing two of the schools. Four of the facilities, South Alexandria Elementary, Lincoln Road Elementary, Peabody Elementary, and Acadian Elementary, one in each cluster, became sixth grade centers to be attended by all sixth graders within each cluster. The plan additionally required the transfer of sixth grade pupils from the Ruby Wise School in Ward 10 to South Alexandria Elementary. Pupils in grades K-5 from the four new sixth grade schools were reassigned to predominantly white schools in their cluster.

Of the other four racially identifiable elementary schools, Aaron Elementary was closed, and South Alexandria Primary, Lincoln Road Primary, and Silver City, one in each of three clusters, were slated to serve grades K-2. They were projected to remain primarily black. Pupils in grades 3-5 from these schools were reassigned to primarily white schools in their cluster.

Thus, elementary school desegregation in Alexandria was accomplished by reassignment of pupils within compact geographic zones. The continuing predominance of black pupils at K-2 schools in three of the clusters was justified through reliance on neighborhood school considerations for the very young. The effect of these reassignments is indeed apparent, and appears to have been largely satisfied by actual enrollment figures for fall, 1980.[3]

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[3] The following shows the impact of the plan on the eight predominantly black elementary schools listed above in note 2.

	Grade	% Black Under Plan Projections	% Black Under Actual Enrollment
(GROUP 1)			
South Alexandria Primary	K-2	99.6	99.3
South Alexandria Elementary	6	44	44.7

To desegregate the Jones Street Junior High School in Alexandria, the court rezoned attendance for each of the five junior high schools in Wards 1, 8, 9, and 10, aiming to achieve a minority enrollment of approximately 40%. Additionally, 205 white students from predominantly white schools in Wards 2 and 11 were assigned to Jones Street. The Ward 2 transferees were seventh and eighth grade pupils from the school in Poland, which was reduced to a K-6 facility. 11th Ward transferees included seventh and eighth grade pupils from the town of Buckeye, three of whom would become involved in further orders. An earlier version had closed the junior high school in Tioga, but the court reconsidered and rejected that determination in formulating its final plan. It noted that "[A]lthough this

	Grade	% Black Under Plan Projections	% Black Under Actual Enrollment
(GROUP 2)			
Lincoln Road Primary	K-2	97.8	96.3
Lincoln Road Elementary	6	44.5	43.3
(GROUP 3)			
Silver City	K-2	100	99.8
Peabody	6	39.3	54.4
(GROUP 4)			
Acadian	6	39.8	39.5

The Court's reasoning and the policy considerations used in formulating this portion of the plan were described as follows:

> We determined that better attendance by whites would be assured if schools in the black area became 6th grade schools, each integrated class having attended school together in grades 3, 4 and 5. We were also aware that busing the entire class to a different school in the white area for grades 3, 4 and 5 would accomplish nothing for integration and that both blacks and whites would be better served if the class from the school in the black area were split in three sections with each section attending one school in the white area for a period of three years. Blacks and whites alike would benefit from attending the same school for 3 out of the 4 years during which the class was clustered. It would also reduce the busing of whites. All students, whether clustered or not, attend the 6th grade in one of the four 6th grade centers in the black area.

plan . . . has deficiencies, it is far better than any of the alternatives suggested. It relieves Tioga of the inequities of the original and spreads the burden of busing far more evenly in other areas." Enrollment figures reveal that these orders were effective, though attainment of projected totals was somewhat frustrated by "white flight."[4]

The remainder of the court's plan affects schools in the southeastern portion of the parish, in Wards 3, 2, and 4. Before promulgation of the plan the Ward 3 town of Lecompte contained three schools, Lecompte Elementary, Carter Raymond, and Rapides High School. Lecompte Elementary and Carter Raymond each served pupils in grades K-8 under earlier orders. Each school had a majority of black pupils in the range of approximately 60 percent. The Lincoln Williams School in Cheneyville, some 10 miles to the southeast of Lecompte, served all area pupils in grades K-8. The school was, as noted above, approximately 93% black, and is the "spur" for additional relief in this area of the parish. About the same distance to the west of Lecompte is the community of Forest Hill, which contained a K-8 school with a black attendance percentage of only 8.3. High school students from both communities went on to Rapides High School in Lecompte. Northeast of Lecompte in Ward 2 is the community of Poland, which had a K-12 school with 9.6 percent black pupils in attendance.

The plan provided for Lecompte Elementary to become a

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[4] Junior high school reassignments altered the percentage of black pupils attending the five schools as follows:

	% Black 1979-80	Projected % Black 1980-81	% Black Under Actual Enrollment, 1980
Alexandria Jr. High	43.7	42.5	42.7
Brame Jr. High	38.4	40.5	44.3
Jones Street Jr. High	93.3	42.6	52.3
Tioga Jr. High	2.5	40.9	42.8
Pineville Jr. High	13.7	41.9	43.7

K-3 facility, and for Carter Raymond to serve grades 4-8. Lincoln Williams was closed, and its K-8 pupils were transferred to the Lecompte schools. Forest Hill was also closed, with its pupils transferred to Lecompte Elementary and Carter Raymond. Pupils from the Poland School in grades 9-12 were shifted to Rapides High School. The variance between percentages of black attendance at these schools as projected by the district court and under actual 1980 enrollments is distinct.[5]

To summarize the cumulative effect of its plan, the court stated:

> 100% of the black student population in the parish will attend integrated schools for ten of the thirteen years of their education. 90.4% will attend fully integrated public schools for the entire thirteen years of their public education. Any one of the 9.6% may attend integrated schools for the entire thirteen years by exercising his right of transfer under the majority to minority rule. Thus all black students in the metropolitan area may attend integrated public schools for the entire thirteen years of their public education if they wish to do so. 100% of the black students outside the metropolitan area are assigned to integrated schools for the entire thirteen years of their public education.

Aside from pupil reassignments, the court provided that principals of certain named schools be white, and of others,

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	Grade	Projected % of Black Attendance	Actual % Enrolled
Poland Elementary	K-6	47.7	36.8
Lecompte Elementary	K-3	45.3	63.9
Carter Raymond	4-8	47.5	61.9
Rapides High	9-12	41.1	43.7

As the school board notes, the variance reflects the fact that most of the Forest Hill pupils have left the public school system to avoid compliance with the district court's order.

black. It reimposed a 31.5 *Singleton* ratio of faculty and staff, and additionally ordered that in each school "the assistant principal be of the race other than that of the principal of that school." The construction of new schools outside of the metropolitan areas was forbidden in the absence of express court approval. Finally, in a comment which should have served to warn those contemplating avoidance of the plan, the court stated "we shall use every means possible to assure that students in the system attend only those schools to which they have been assigned."

POST-JUDGMENT PROBLEMS

Vociferous community resistance to the plan surfaced soon after its implementation, both in the southeastern portion of the parish, at Forest Hill, and in the northeastern community of Buckeye. Forest Hill residents had attempted to intervene on August 1, 1980, just before the date of final judgment, to complain of the closing of their school. They urged that previous pleadings and evidence had not given notice that the facility was in jeopardy. Intervention was denied by the district court as untimely.

After the plan was adopted and imposed for the 1980-81 school year, Forest Hill residents "quietly and peaceably" moved onto the closed school grounds and began to teach their children on the premises. The district court had previously issued an injunction against interference by school officials with implementation of the plan, but it does not appear that these residents acted in concert with school officialdom.

The government requested a temporary restraining order barring such use of the school. A hearing was held, after which the district court prohibited the residents from setting foot on the ten-acre school premises, on pain of a fine between $100 and $300 per day. This order was merged into a permanent injunction on September 22.

Matters became even more heated in the northern part of the parish, and centered around efforts of the parents of three former Buckeye students to thwart their transfer to the Jones

Street School. The parents of Michelle LaBorde, Lynda McNeal, and Ramona Carbo sought relief from State District Judge Richard E. Lee of the Ninth Judicial District of Louisiana. They obtained orders awarding "provisional custody" of the girls to families living in the zone of Buckeye attendance.

The district court was apprised of these maneuvers, and wrote a letter to the school superintendent directing him to terminate the girls' enrollment at Buckeye until such time as they had obtained permission to transfer from a court-appointed transfer committee. The principal at Buckeye ordered them to leave the school.

The parents then jointly filed a petition for writ of mandamus and injunctive relief in the state court, docketed as *LaBorde, et al v. Waite* before Judge Lee. The United States District Court for the Western District of Louisiana was named a respondent. On November 3rd, Lee ordered school officials to allow the girls to attend Buckeye, and on November 6th, he temporarily enjoined United States District Judge Nauman Scott from issuing any order or decree "interfering with or tending to interfere with the administration of justice by the Ninth Judicial District Court of Louisiana . . . or the rights, privileges and immunities of petitioners as litigants [before that court]."

On November 6 the United States Department of Justice, as counsel for the United States District Court, filed a petition to remove *LaBorde v. Waite* to federal court. The petition was granted on the same day, and Judge Scott vacated Judge Lee's injunctions of the 3rd and 6th.

This action did not deter Judge Lee from issuing injunctions. On November 7, he enjoined Judge Scott from interfering with the attendance of the three children at Buckeye High School, and on November 14 he enjoined school officials from obeying federal court orders. On the same day, Judge Scott enjoined the parents, guardians, school officials and their attorneys from proceeding further in state court. He scheduled a show-

cause hearing to determine why the girls' enrollment at Buckeye should not be terminated.

The hearing was held on December 3. Judge Scott ruled that the girls must attend school in compliance with the August 8 order until such time as permission to transfer was formally obtained, and refused to consider evidence concerning the status of their residence until applications for transfer had been filed. He then terminated their Buckeye enrollment, directed school officials to enroll them at Jones Street, and made permanent his injunction against further state court proceedings.

Once again, Judge Lee was not deterred. On December 4, acting *sua sponte*, he ordered Sheriff Marshall T. Cappel to accompany the girls to the Buckeye school and arrest anyone who attempted to interfere. Such persons were to be brought before him. To avoid a confrontation, school officials allowed the girls to stay in the school, but denied them credit until their assignment status was resolved.

Judge Lee then, on December 5, ordered the superintendent to afford credit to the girls, or, in the alternative, "to show cause why [he] should not be held in contempt of court and fine, jail sentence or both imposed."

The girls, continuing at Buckeye, filed the formal applications demanded by Judge Scott and he set a hearing for December 19. Their counsel waived presentation of evidence, and the United States presented witnesses. Judge Scott found that the sole purpose of the custody proceedings was to evade the August 6 desegregation order. He ordered the principal to terminate the girls' Buckeye enrollment, but allowed him to give them credit for the time they had attended, provided that they enrolled at Jones Street after the Christmas recess. The parents, guardians, and school officials were advised that a penalty of $500 per day would be assessed against any person who violated these orders. Judge Scott took under advisement the government's motion for an injunction against the sheriff, denied the LaBordes' request for a stay, and vacated the state court orders of December 4 and 5. On December 23, the court

filed a written opinion containing this injunction, and on December 29 amended it to include the sheriff. It also dismissed the state court suit which had been removed.

Judge Lee was not finished yet. On January 2, he ordered school officials to enroll the girls at Buckeye, and made them wards of his court to avoid "serious psychological and mental abuse." There followed a series of events which would resemble comic opera were it not for their unfortunate impact on the community. Three state troopers were sent with the girls to class at Buckeye on January 5. They ordered the principal to enroll them. On the same day, Judge Scott issued a temporary restraining order enjoining Louisiana, the state police, "and all persons with notice of this order" from enforcing the state court's orders or interfering with those of the district court issued August 6 and December 29. This was served on the Attorney General of Louisiana, the state police, and Judge Lee. On receipt, the state troopers withdrew from Buckeye. The next day, Judge Lee ordered the local constable to accompany the girls and enforce his order. He also withdrew after being apprised of the federal injunction.

Finally, with all state and local law enforcement authorities apparently complying with federal orders, Judge Lee personally escorted the girls to class on January 7, 12, and 13, directing the principal to enroll them on pain of arrest. The principal complied. In the meantime, on January 7, Judge Scott ordered Judge Lee and the girls' parents to show cause why they should not be found in contempt of the injunctions issued December 29 and January 5.

On January 14, Judge Scott held a hearing on whether to convert his temporary restraining order of January 5 to a permanent injunction. Louisiana stipulated that it was binding on all state officials. The court then made the state and Judge Lee parties, and enjoined them from interfering with its orders and from enforcing any state court orders in *LaBorde v. Waite*. On the following day, a hearing was held on the show cause order. Judge Scott ruled that the government had presented a compelling prima facie case of contempt, and, after

receiving assurances from Judge Lee and the other parties that they would comply with his orders, dismissed the contempt motions without prejudice. The court allowed the girls credit for the fall semester at Buckeye, conditioned upon their enrollment at Jones Street for the fall semester. It required that their transcripts be submitted to the court until they had complied. Since January 14, the girls have neither attended public schools in Rapides Parish nor agreed to enroll in Jones Street.

ISSUES ON APPEAL

Eight separate appeals have reached us from the orders below. The Rapides Parish School Board appeals from the merits of the district court's August 6, 1980, final judgment. It asserts (1) that the school system was unitary in the 1979-81 years, obviating the need for further relief, (2) that if the system was not yet unitary, the remedy imposed improperly exceeded the scope of the violation, and (3) that in any event, the district court erred in ordering immediate implementation of the plan without giving the parties further time to arrive at a proper remedy.

The Forest Hill residents who had attempted to intervene appeal (1) from the denial of the intervention, and (2) from that portion of the August 6 order which closed the Forest Hill School, characterizing it as outside the scope of relief requested by the original parties. Forest Hill residents further appeal from the injunction which prohibited use of the closed school facility there, contending (1) that they were not in violation of the court's original injunction against official interference, (2) that a prerequisite showing of irreparable harm had not been made, (3) that the injunction exceeded the scope of relief requested, and (4) that it infringed their First Amendment rights to free speech and peaceable assembly.

The remaining appeals arise from the Buckeye furor. The parents of the three girls who attempted to evade Jones Street attendance challenge the injunctions issued by the district court to compel their compliance with its desegregation order.

In particular, they maintain the invalidity of the district court's retention of the girls' transcripts pending compliance. The Rapides Parish sheriff, Marshall T. Cappel, appeals from the district court order prohibiting his interference with implementation of the desegregation orders. Finally, the State of Louisiana has appealed from those orders of the district court which enjoined the state and its officials from executing state court orders contravening those of the federal court, and argues that the federal court's retention of transcripts pending compliance violates fundamental rights to travel, to change residence, and parental rights to direct the upbringing and education of children.

RESOLUTION

I. THE MERITS OF THE DESEGREGATION ORDER

In its appeal docketed here as No. 80-3722, the Rapides Parish School Board attacks both the district court's finding that supplemental relief was required and certain elements of the plan imposed. The board first contends that the "entire system as constituted prior to the imposition of this plan was unitary." This contention is grounded on three basic assumptions. First, it is assumed that this court, by its last consideration of the case in 1970, held the system to be unitary with the exception of student assignments in Wards 1 and 8, "and possibly 3 and 4." Second, it is assumed that the one-race schools in the Alexandria Wards 1 and 8 area exist "solely because of the residential preference of the students and are not caused by any unconstitutional action by this school board." Third, it is assumed that the 93% black school at Cheneyville in Ward 3 owes its racial character to the unavoidable effect of "white flight" after earlier decrees had paired area schools.

We conclude that the district court correctly applied the appropriate legal standards in finding further relief to be necessary. In its 1970 opinion, *Valley v. Rapides Parish School Board*, *supra*, this court made no express or implied finding that any portion of the system was unitary; it merely affirmed those portions of the plan appealed from insofar as

they did not deal with pupil transfers in the Alexandria wards. *See* 434 F.2d 144 and 145. If the district court later held other areas of the parish unitary under a plan not appealed from, that finding binds neither this court nor the court below. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), firmly established that the duty to eliminate *all* vestiges of state imposed segregation is *continuing*. A plan which gives promise of establishing a unitary system cannot foreclose further relief if it does not in fact abolish the evidences of segregation. In any case, only time will tell.

We cannot ignore the continued existence of one-race schools in this system. In *Swann*, the Supreme Court stated:

> . . . in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition . . . [T]he court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part. 402 U.S. 1 at 26, 91 S.Ct. 1267 at 1281, 28 L.Ed.2d 544 at 572.

This principle has been consistently applied. *See, e. g., Anderson v. County Board of Education*, 609 F.2d 225 (5 Cir. 1980); *United States v. Board of Education of Valdosta*, 576 F.2d 37 (5 Cir. 1978); *Boykins v. Fairfield Board of Education*, 457 F.2d 1091 (5 Cir. 1972).

We must also reject the school board argument that the existence of these schools is justified by demographic facts regarding residential patterns in Alexandria. Only last year, in *Lee v. Macon County Board of Education*, 616 F.2d 805 (5 Cir. 1980), we held that "[N]ot until all vestiges of the dual system are eradicated can demographic changes constitute legal cause for racial imbalance in the schools." 616 F.2d 805 at 810. *See also Valdosta, supra*; *Flax v. Potts*, 464 F.2d 865 (5 Cir. 1972). As the figures set out in note 2, *supra*, reveal, these schools

have never been desegregated. In the same sense, their composition may not be justified by pointing to "white flight" as a permissible causative to continued imbalance. If such a factor renders a plan unworkable, the district court may attempt another solution, but we will not allow desegregation to be thwarted by extra-legal action.

Against this legal backdrop, the maintenance of the all-black schools described *supra* from 1965 through the spring of 1980 is glaring, and clearly requires further relief. We now turn to an examination of the plan drawn by the district court.

The appellant school board contends that if further relief was indeed required, the district court's remedy was excessive. First, the board argues that the plan improperly orders changes in areas of the parish which were not put in issue by motions, and where the schools have previously been declared unitary. It is maintained that "[T]he motion of the United States in Wards 1 and 8, and the plan proposed by their expert, under limiting directions from the government, involved only schools in Wards 1, 8, and 9. Although plaintiff's motion originally rather vaguely referred to all schools in the system, plaintiffs never submitted a plan involving schools in other wards to the court and affirmatively adopted the plan proposed by the government."

Secondly, the board urges that the court erred in failing to accord the same recognition to "neighborhood" or community schools in the rural areas of the parish as it did in the metropolitan zone. It asserts that the holding that no neighborhood schools exist in rural areas was "a fundamental error of fact which led the district court into improperly rearranging the schools, and students, in Cheneyville, Poland, Lecompte, Forest Hill, Ruby Wise, and Buckeye areas, including the closing of Forest Hill."

Finally, the board complains that immediate implementation of the plan prevented the formulation of a proper remedy, and left no time for planning or efforts to convince school patrons that the plan would not adversely affect their children.

Having carefully studied the plan, we are convinced that the

district court performed admirably in most respects. It must be remembered that the school board did not propose any plan of its own, and that the private plaintiffs merely adopted a government plan which the court deemed inadequate. Given this level of guidance from the parties, the plan is a remarkably well-considered response to a difficult set of problems.

The fashioning of relief in a school desegregation case is an exercise of the district court's discretion in creating an equitable remedy as a response to the denial of constitutional rights. Where the local school authorities have failed to remedy past wrongs, the power of the district court is broad. *Swann, supra*, 402 U.S. 1, 15, 91 S.Ct. 1267, 1275, 28 L.Ed.2d 554, 566. "The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." *Id.*, 402 U.S. 1, 16, 91 S.Ct. 1267, 1276, 28 L.Ed.2d 554, 566. The criterion for determining the validity of provisions in a desegregation plan is whether they are reasonably related to the ultimate objective. *U.S. v. Jefferson County Board of Education*, 372 F.2d 836 (5 Cir. 1966).

In considering these measures, the district court properly viewed the system as a whole, rather than limiting its consideration to the racial imbalance of isolated schools in the system. *Lee v. Macon City Board of Education, supra.* The entire parish operated as a dual, segregated system in the past, and statistics show that the vestiges have not been eradicated "root and branch" as required.

We must reject any contention that the movants below waived a remedy going beyond Alexandria and its immediate environs. The government points out in its brief that it was only logical to concentrate on discussion of problems in Alexandria, where most of the one-race schools were located. At the April hearing, the government expressly reserved its right to seek desegregation outside of Alexandria. The private plaintiffs initially sought desegregation of every racially identifiable school in the parish, and, when they endorsed the Foster plan, renewed their request for a system-wide remedy. It

should finally be noted that at the same hearing, counsel for the school board commented on the Foster plan as follows:

> Why didn't you come prepared to deal with the whole system, is what I don't understand. If you are not able to say now that what you propose will convert us to a unitary school system, why didn't you go ahead and include everything that will convert us to a unitary school system, because that is what you say we have got to do.

We perceive no serious objection to that portion of the plan concerning elementary school pupils in Alexandria. The cluster units are well conceived, and achieve a proper balance between competing considerations. Desegregation is achieved within school groupings which do not require long-distance transfer. Further, it is apparent from the fall, 1980 enrollment statistics quoted above that the plan is indeed showing promise of success as intended.

Serious objections are raised, however, to those portions of the plan which are aimed at the desegregation of Alexandria area junior high schools and schools in the southeastern wards of the parish. Not surprisingly, these are the provisions requiring some degree of inter-community pupil transfer. The objections revolve around the importation of junior high school pupils from Wards 2 and 11 into Alexandria, and the closure of rural schools at Forest Hill and Cheneyville. Specific findings were made to justify these orders, and we must determine whether the district court abused its discretion in fashioning the relief complained of.

The appellants contend that the district court erred in failing to accord the same respect to neighborhood schools in rural areas as to those in Alexandria; the comment that there can be no rural neighborhood schools is cited as an example of this asserted misconception. We agree that the comment, taken in its absolute context, is clearly erroneous. A review of case law concerning the neighborhood school concept will reveal that it should apply equally to metropolitan and rural facilities.

We have recognized that "[U]sually, in rural and some city school districts where the population is diffused, assignment on a strict neighborhood basis has been sufficient to eliminate discrimination in student assignments." *Cisneros v. Corpus Christi Independent School District*, 467 F.2d 142, 152 (1972). It has consistently been held, however, that if such measures prove inadequate to the task of eradicating all vestiges of a dual school system, "[A] district court may and should consider the use of all available techniques including the restructuring of attendance zones and both contiguous and noncontiguous attendance zones." *Davis v. Board of School Commissioners*, 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577, 581 (1971). We reject any argument that urban and rural facilities within a single school district which operated as a dual system and has not yet achieved unitary status may not, as a matter of law, be paired or clustered together.

In formulating such a plan, it is clear that bus transportation may be utilized. The Supreme Court long ago ruled that there is "no basis for holding that . . . school board authorities may not be required to employ bus transportation as one tool of school desegregation." *Swann*, *supra*, 402 U.S. 1, 30, 91 S.Ct. 1267, 1283, 28 L.Ed.2d 554, 575. It is also clear that in its formulation of noncontiguous zones, pupil reassignments within them, and transportation to effectuate the reassignments, the district court should take into consideration such equitable factors as "[T]he length and time of travel . . . in light of the age of the children, and the risk to health and probable impingement on the educational process." *Cisneros*, *supra*, 467 F.2d 142 at 153. These considerations are equally applicable to rural and metropolitan schools.

As to the more intangible values associated with the neighborhood school concept, there should be no urban-rural distinction. We recognize that rural schools may, as the appellants contend, serve the same community function and implicate the same values as those in urban zones. We are told that since the days of the one-room red-brick schoolhouse, life in rural communities has frequently revolved in large measure around the

local school, which may be the only cohesive element to cement dispersed residents into a community.[6] This may well be true, and such considerations are not without importance. They are, however, even more yielding than practical variables such as proximity when posed against the continuing need to achieve meaningful desegregation. In *Keyes v. School District No. 1, Denver, Colorado*, 521 F.2d 465 (1975), *cert. denied*, 423 U.S. 1066, 96 S.Ct. 806, 46 L.Ed.2d 657 (1975), the Tenth Circuit noted the importance of neighborhood contact in such areas as the playground, extracurricular activity, and parental involvement, but cogently observed that "we cannot place it above the constitutional right of children to attend desegregated schools." 521 F.2d 465 at 478.

Further, we see no reason for a general distinction between urban and rural facilities as regards the closing of schools pursuant to a plan for desegregation. The closing of a facility built and maintained at the expense of local taxpayers is a harsh remedy, which should only be employed if absolutely necessary to achieve the goal of a unitary system after all other reasonable alternatives have been explored. Where a district court adopts such a measure, the inquiry before us is whether the order was an abuse of discretion. *See Ellis v. Board of Public Instruction*, 465 F.2d 878, 880 (5 Cir. 1972). The district court must explicitly state its justification for ordering a school closed, in order that we may properly make this determination.

Applying these principles to the order before us, we find those regarding Alexandria Junior High Schools [*sic*] to have been within the bounds of discretion. The unyielding racial

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[6] Certain of the appellants have urged us to hold that there is a fundamental right to maintain a rural society separate and apart from the urban environment; it is said to emanate from fundamental principles "beyond the constitution." While doubtless, the choice of rural residence and lifestyle enjoys the protection of express and implied constitutional guarantees, there is no broad, ephemeral right to a separate rural life which will defeat the otherwise valid orders of a district court in furtherance of the long-recognized constitutional mandate to desegregate.

character of the Jones Street School was the worst problem confronting the court. Specific findings were made to justify the reassignment of pupils from Wards 2 and 11 to that facility, and it appears that reasonable alternatives were fully explored. Participation of pupils from Buckeye and other areas of Wards 2 and 11 was justified on the following grounds:

> Although this parish first encountered integration problems in 1965, and has had an active history of integration endeavor since that time, the Buckeye schools have shouldered no responsibility. Out of a combined population of 1306 students, 87 are being assigned to Jones Street. They, like all the other students so assigned are already bused, their buses simply are being turned in another direction. They are the students in each ward that are nearest to Jones Street. We find this alternative to be the most equitable at our disposal.

Intercommunity busing into Alexandria does not begin until the seventh and eighth grades, and involves only 205 pupils under plan projections. We discern no basis for concluding that the district court's comment regarding rural neighborhood schools reflected an improper disregard of equitable consideration in constructing these zones of transfer; rather, it appears that the court properly balanced the relevant competing considerations. We therefore leave undisturbed those portions of the order involving northeastern Rapides Parish.

We cannot lend our sanction so easily, however, to those portions of the plan involving pupils and facilities in Wards 3 and 4. Here, as we have described, the district court elected to close a predominantly white rural school, Forest Hill, and a predominantly black school, Lincoln Williams, equidistant in different directions from the town of Lecompte, and to transfer their pupils to Lecompte schools. As far as we can determine, the only justification for closing Lincoln Williams was its predominance of black pupils. The court admitted that Forest Hill is more modern than Lecompte Elementary, but described the latter as having "much the better location for

purposes of integration," in terms of distance for busing of reassigned pupils. Alternatives are only sparingly mentioned.

These findings are an insufficient factual basis on which to approve the closing of Forest Hill and Lincoln Williams. Equally effective alternatives may exist which would avoid the closing of a modern facility and the intercommunity transfer of kindergarten pupils. These should be explored on remand and, if the district court adheres to its present plan, specific reasons for their rejection should be given. We cannot ignore the district court's disregard of neighborhood considerations for rural schools in this context, particularly where K-2 students in Alexandria were spared transfer to the point that three schools remain virtually all-black. Specific desegregation measures in southeastern Rapides Parish should be re-examined in light of the full range of mitigating equitable considerations.

In passing on objections to the merits of the district court's plan, we are left with the school board's argument that the court's order requiring immediate implementation only days before the fall term was to begin constituted an abuse of discretion. We flatly reject such a contention.

As counsel for the school board are no doubt aware, the Supreme Court has repeatedly and firmly declared that school systems must begin to operate immediately on a unitary basis and that requests for delay must be viewed in light of the passage of time since the inception of desegregation efforts. "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now." *Green*, *supra*, 391 U.S. 430, 439, 88 S.Ct. 1689, 1694, 20 L.Ed.2d 716, 724. The operative word is *now*. *See also Wright v. City Council of Emporia*, 407 U.S. 451, 460, 92 S.Ct. 2196, 2202, 33 L.Ed.2d 51, 60 (1972); *Swann*, *supra*, 402 U.S. 1, 13, 28 L.Ed.2d 554, 565, 91 S.Ct. 1267, 1275 (1971). *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 20, 90 S.Ct. 29, 24 L.Ed.2d 19, 20 (1969); *Dowell v. Board of Education*, 396 U.S. 269, 270, 90 S.Ct. 415, 416, 24 L.Ed.2d 414, 416 (1969); *Bradley v. School Board*, 382 U.S. 103, 105, 86 S.Ct. 224, 225, 15 L.Ed.2d 187, 189 (1965); *Rogers v.*

Paul, 382 U.S. 198, 199, 86 S.Ct. 358, 359, 15 L.Ed.2d 265, 267 (1965).

In the case *sub judice*, sixteen years of litigation have not achieved the goal of a unitary system. Further, we note that the school board did not aid the district court by proposing specific remedial measures, having had the opportunity to do so long before the beginning of the 1980 term. Finally, there has been neither a showing nor even an allegation of harm resulting from the court's implementation order sufficient to underly [*sic*] a finding that discretion was abused.

II. INTERVENTION BY FOREST HILL RESIDENTS

By the appeal docketed here as No. 80-3855, residents of the town of Forest Hill challenge the denial of their intervention into this suit, attempted after the district court's plan had been originally proposed. The appellants claim entitlement to intervention as a matter of right under Fed.R.Civ.P. 24(a)(2), and assert that permissive intervention was proper under section (b)(2) of that rule. They claim that no notice had been given them from pleadings or proceedings that their school would be affected until after the district court issued its plan, and assert that no prejudice to other parties would result from their intervention.

These arguments run afoul of a series of cases decided by this court regarding intervention under Rule 24 in desegregation cases. Clearly, the appellants were not entitled to intervene as a matter of right. In *United States v. Perry County Board of Education*, 567 F.2d 277, 279 (5 Cir. 1978), we held for the first time that "parents seeking to intervene [in desegregation cases] must demonstrate an interest in a desegregated school system," and affirmed the district court's denial of intervention on the ground that the movants were attempting to *challenge* elements of the plan. This position was reaffirmed in *Pate v. Dade County School Board*, 588 F.2d 501 (5 Cir. 1979), where it was held that parents opposing facets of a desegregation plan have no right to intervention under Rule 24(a)(2), and that "[T]he parental interest that justifies permissive intervention

is an interest in a desegregated school system." 588 F.2d 501 at 503.

Even if we were to assume that the appellants stated a judicially cognizable interest by opposing the desegregation plan, it is clear that the district court did not abuse its discretion by denying the motion. Under our decision in *Hines v. Rapides Parish School Board*, 479 F.2d 762 (5 Cir. 1973), intervention may be denied where existing parties to a lawsuit have advanced the position which intervenors seek to promote, or where the district court has already considered and passed on that matter; here, the school board opposed the closure of the Forest Hill facility, and the district court considered and rejected its argument. Concluding that the denial of intervention was proper, we do not address the appellants' specific arguments with regard to the closing of Forest Hill School.

III. THE INJUNCTION AGAINST USE OF FOREST HILL SCHOOL

By the appeal docketed as No. 80-3776, residents of Forest Hill challenge the district court's permanent injunction of September 22, 1980, which prohibited any use of the Forest Hill School grounds. A number of arguments are advanced toward showing the invalidity of this order, as noted *supra*.

We will not, however, discuss those assertions in detail. We realize that the district court was faced with what clearly appears to have been an organized move to thwart its orders when residents began to teach children at the closed facility. An evidentiary hearing was held before the injunction issued, at which Forest Hill parents testified that they had been present at the school, and, with full knowledge of the court's order of closure, deliberately disobeyed it. On the other hand, while action was necessary, the district court was also required to observe the principle that an injunction is to be narrowly tailored to remedy the specific action which gives rise to it. A total prohibition on the use of a modern facility which could serve many community purposes other than the teaching of children seems extremely broad.

In any event, we conclude that it is appropriate for the district court to resolve this dispute, if application for relief from the order is made to it following remand of the cause. The lower court is in a far better position than this tribunal to balance the competing interests involved.

IV. APPEALS FROM THE BUCKEYE DISPUTE

The remaining appeals[7] are from orders issued by the district court to protect the integrity of its desegregation plan following an attempt by three pupils to enroll in a junior high school other than that contemplated by the plan. Among the most unfortunate occurrences in the long history of school desegregation have [*sic*] been the employment of various legal devices to thwart realization of the ultimate goal, whether for an entire system or for particular pupils. Here, a novel scheme was hatched with the aid of a state trial judge: the transfer of custody for three girls to residents of a zone which permitted attendance at the school to which they had previously been assigned.

At the outset, we must restate several fundamental propositions which the parents involved and their counsel have chosen to overlook. First, a federal court has the power to root out all vestiges of state-sponsored segregation where school authorities have failed to do so. *Swann*, *supra*. This broad power undoubtedly includes the authority to rearrange attendance zones and supervise student transfer policies. *Id.* We have held that in the case *sub judice*, the remedial power of the district court was invoked by a finding that this system was not unitary, and we have upheld those portions of the plan involving junior high school attendance zones.

While it has long been held that parents have a right to direct the education of their children, *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), such a right does not give them the unqualified authority to choose a particular

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[7] These are docketed as numbers 80-3988, 81-3008, 81-3013, 81-3033, and 81-3083.

public school. A federal district court's desegregation order will bind the children affected, their parents, and state and local officials. *United States v. Hall*, 472 F.2d 261 (5 Cir. 1972).

We will first take up the district court's orders regarding actions by the state court and the litigants before it. We find the district court to have acted properly in removing the state cases to federal court, in vacating the state judge's orders afterward, and in the exercise of its jurisdiction and injunctive power as to the state court and litigants.

There is absolutely no ground suggested to us or discernable in the record on which we could find clearly erroneous the district court's conclusion that these custody transfers were a sham intended to avoid the effect of the desegregation orders. Clearly, that is what occurred. One of the witnesses presented by the government at the hearing on this matter was a school bus driver. He testified that Ramona Carbo was picked up at her parents' home on Monday and Thursday mornings, and was returned there on Wednesday and Friday afternoons. This finding alone is sufficient to dispose of the argument that matters of juvenile custody are reserved to the state courts; if the sole purpose of a state judicial order is to thwart the vindication of a federal constitutional guarantee, we will pierce the veil of sham to prevent pretextual disregard of valid remedial orders.

It is also clear that the district court properly exercised its power under 28 U.S.C. § 1442, in removing the state case to federal court where the court was named as a defendant, and that the court had broad power under the All Writs Act, 28 U.S.C. § 1651 to enjoin third parties, *including state courts*, from interfering with its desegregation orders. *See Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5 (1958); *United States v. Hall*, *supra*; *United States v. State of Texas*, 356 F.Supp. 469 (E.D.Tex. 1972), *aff'd*, 495 F.2d 1250 (5 Cir. 1974).

The district court acted with both dispatch and prudence in fashioning its injunctions against the state court, parents, and pupils involved. After resistance had come to a head and then collapsed, the court did not impose a penalty upon Judge Lee,

but accepted a promise to avoid further interference. This was an act of no little tolerance where the state court caused several third parties, most notably school officials, to be faced with conflicting orders from state and federal courts. The district court obviously, in all of these orders, kept in mind the principle that "state policy must give way when it operates to hinder vindication of federal constitutional guarantees." *United States v. Scotland Neck City Board of Education*, 407 U.S. 484, 488, 92 S.Ct. 2214, 2216, 33 L.Ed.2d 75, 80 (1972).

Finally, it is noteworthy that the state judge's actions appear to have no basis in Louisiana law. Article 220 of the Louisiana Civil Code, which we are told was the authority for Judge Lee's ruling, is designed to be used primarily as authority for a teacher to discipline students placed under his or her care. We are unable to find any mention of a "provisional custodian" in the context used by Judge Lee under Louisiana statutes or case law. It is further apparent that the state judge either ignored or was ignorant of the holding of the Louisiana Supreme Court in *Swope v. St. Mary's Parish School Board*, 256 La. 1110, 241 So.2d 238 (1970):

> Our Court system should not be used as an instrument to circumvent orders and decrees of a Federal Court in a controversy in which the latter has already asserted its jurisdiction. Any other course, if pursued regularly, will set the State and Federal Courts into continuous and chaotic conflict; and it will place litigants as well as the District Judges of this State in an obviously untenable, if not impossible, position, such as would result in the present case if we were to order the [State] District Judge herein (and ultimately the defendants) to defy the presently existing orders of the Federal Court. 241 So.2d 238 at 242.

As Judge Lee flagrantly disobeyed the orders of a federal court issued within the bounds of jurisdiction and discretion, ignored the distinct contours of federal and state jurisdiction, disregarded the clear command of his own State Supreme Court, and blatantly overstepped his judicial role as mediator, choos-

ing instead to act as advocate for a politically popular position, it is not at all strange that he wound up as a leader without troops, standing ineffectually at the school house door.

The injunctions lodged against the Rapides Parish sheriff and the state of Louisiana must also be affirmed. As we have noted, the decision of the Supreme Court in *Cooper v. Aaron*, *supra*, renders it clear that state officials are bound through the supremacy clause by a federal court's desegregation order, regardless of whether they acted in good faith or pursuant to a nondiscretionary duty.

Of all of the orders issued by the district court during this period, only one requires correction on remand. Insofar as the court's order retaining the girls' transcripts pending enrollment in compliance with the plan operates to restrain them from choosing to attend a private school, it must fail. In *Pierce v. Society of Sisters*, *supra*, the Supreme Court established the existence of a right to attend non-public schools as a concomitant of "the liberty of parents and guardians to direct the upbringing and education of children under their control." 268 U.S. 510, 534-35, 45 S.Ct. 571, 573, 69 L.Ed.2d 1070, 1078. The retention of transcripts could also be viewed as an impermissible restraint on the constitutional right to travel, if a decision were made to send the girls to schools outside of Rapides Parish. If these three pupils choose to attend Rapides Parish public schools, they may be ordered to attend that school assigned them under the plan and their transcripts may be withheld until compliance, within the discretion of the district court. No such action, however, may be taken to compel their attendance at public schools, and no penalty may be attached to a decision not to do so.

CONCLUSION

Thus is concluded another chapter in the history of Rapides Parish desegregation litigation. On the whole, the history is a story of both tragedy and hope. Tragedy lies in the fact that sixteen years have not been sufficient to eradicate the vestiges of segregation, and that after the passage of so many years,

certain elements of the community, including a member of the state judiciary, are evidently willing to hinder the task and are unwilling to bear any sacrifice. Hope lies in the real possibility that the plan instituted by the district court in 1980, together with whatever modifications the district court may implement on remand, will finally result in the establishment of a unitary system.

Several important lessons may be learned from the course of this litigation to the present. One is that resistance will be perpetually fruitless. The remedies afforded by the law to those who feel aggrieved by their burden under a desegregation plan are a request for reconsideration by the district court and appeal if it is refused. Defiance is the worst possible course, for the second lesson is that such efforts along with more subtle attempts to thwart the progress of desegregation will only prolong the process and possibly increase the burdens on all involved. Federal courts with continuing jurisdiction over desegregation efforts will not ignore the task entrusted to them by the Constitution and laws.

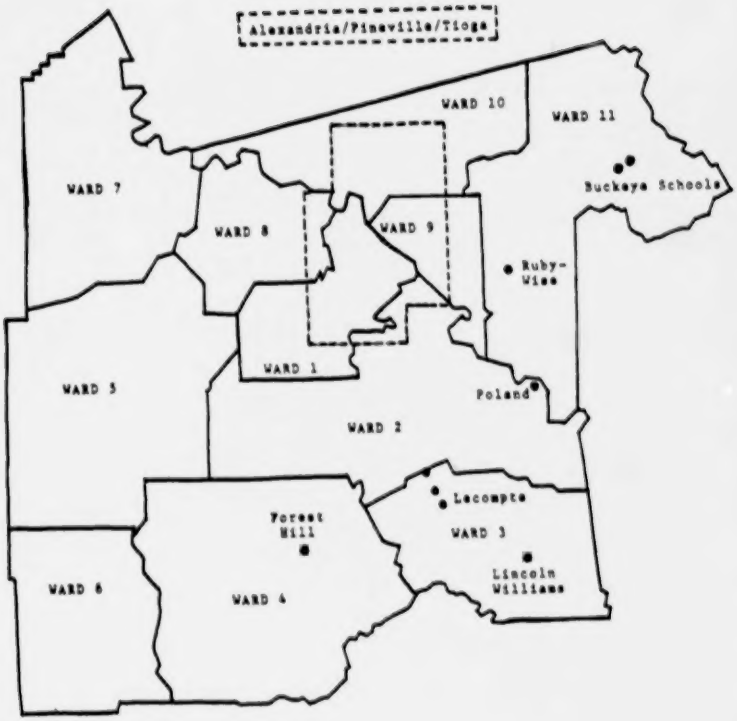
If all parties and affected persons will work together in good faith, progress toward a unitary system can be smooth and speedy. If maximum input and guidance are given a district court engaged in the formulation of relief, the plan emerging will necessarily be more equitable than one devised in an atmosphere devoid of cooperation. What all parties to this suit should bear in mind, is that when a unitary system is achieved, litigation will end and full attention may be returned to the business of educating children in the best way possible. The words used by the Supreme Court to conclude its opinion in the *Swann* case are instructive:

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems would then be "unitary" in the sense required by our decisions in *Green* and *Alexander*.
>
> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authori-

> ties nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmation duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the state has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary. 401 U.S. 1, 32, 91 S.Ct. 1267, 1284, 28 L.Ed.2d 554, 575-78.

The judgment of the district court is affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. The plan imposed by the district court will remain in full force until such time as it may be amended below.

AFFIRMED IN PART and REVERSED IN PART; REMANDED.


Alexandria/Pineville/Tioga
WARD 10
WARD 11
WARD 7
Buckeye Schools
WARD 8
WARD 9
Ruby-
Wise
WARD 1
WARD 5
Poland
WARD 2
Lecompte
Forest
Hill
WARD 3
Lincoln
Williams
WARD 6
WARD 4

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APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 80-3722

D. C. Docket No. CA 10,946

VIRGIE LEE VALLEY, ET. AL.,
Plaintiffs-Appellees,

UNITED STATES OF AMERICA,
Intervenor-Appellee,

versus

RAPIDES PARISH SCHOOL BOARD, ET. AL.,
Defendants-Appellants.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

Before COLEMAN, GARZA and SAM D. JOHNSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed in part and reversed in part; and that this cause be, and the same is hereby remanded to the said District Court for proceedings consistent with this opinion;

IT IS FURTHER ORDERED that appellants pay to appellees, the costs on appeal to be taxed by the Clerk of this Court.

MAY 18, 1981

ISSUED AS MANDATE: AUG 24 1981

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 80-3855

D. C. Docket No. CA 10,946

VIRGIE LEE VALLEY, ET. AL.,
Plaintiffs-Appellees,

UNITED STATES OF AMERICA,
Intervenor-Appellee,

versus

RAPIDES PARISH SCHOOL BOARD, ET. AL.,
Defendants,

CLYDE HOLLOWAY, ET. AL.,
Defendants-Appellants.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

Before COLEMAN, GARZA and SAM D. JOHNSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED that appellants pay to appellees, the costs on appeal to be taxed by the Clerk of this Court.

MAY 18, 1981

ISSUED AS MANDATE JUN 9 1981

APPENDIX J

VIRGIE LEE VALLEY, ET AL.,
Plaintiff-Appellee,

UNITED STATES OF AMERICA,
Intervenor-Appellee,

v.

RAPIDES PARISH SCHOOL BOARD, ET AL.,
Defendants-Appellants.

No. 80-3722.

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT.

Aug. 14, 1981.

ON PETITION FOR REHEARING

Before COLEMAN, GARZA and SAM D. JOHNSON, Circuit Judges.

PER CURIAM:

On motion for rehearing the appellant Rapides Parish School Board raises a single issue concerning the following provision of the district court's order:

> "3. *Designation of Faculty and Other Staff.* The *Singleton* ratio of faculty and staff (31.5) as stated in our previous decrees is confirmed and shall be maintained. More specifically, the ratio of black principals shall be filled by priority at the beginning of each school year unless waived by special order of this Court. It has come to our attention that the ratio is one short, so that the first principal now to be appointed must be black.
>
> The current policy that a minority assistant principal must be appointed as soon as the number of minority students in a school reaches 20%, is now rescinded. This policy, though helpful in the past, has resulted in overstaffing in some instances, and under the plan now adopted, is no longer necessary. It is now ordered that in

> each school the assistant principal be of the race other than that of the principal of that school."

The Board maintains that the court below has enforced this provision as a system-wide racial hiring quota, in contravention of *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5 Cir. 1969), and its progeny. *See also Carter v. West Feliciana Parish School Board*, 432 F.2d 875 (5 Cir. 1970); *George v. Davis*, 365 F.Supp. 446 (M.D.La.1973) aff'd, 493 F.2d 663 (5 Cir. 1974). The United States, intervenor-appellee, has argued that the challenged provisions relate only to *assignment*, not hiring, and that they validly restate the *Singleton* requirement that the ratio of black and white staff in each school approximate the ratio in the parish as a whole.

In our opinion on the merits of this case, reported at 646 F.2d 925 (5 Cir. 1981), we affirm all portions of the district court's order which were not reversed, and we did not specifically address this issue. We do not have a record before us sufficient to show how the provision complained of has been enforced and we therefore instruct the district court to re-examine this matter on remand, in light of the authority cited.

SO ORDERED.

APPENDIX K

UNITED STATES DISTRICT COURT,
W. D. LOUISIANA,
ALEXANDRIA DIVISION.

AUG. 6, 1980.

CIV. A. NO. 10946.

VIRGIE LEE VALLEY ET AL.

v.

RAPIDES PARISH SCHOOL BOARD.

OPINION

NAUMAN S. SCOTT, Chief Judge.

This suit to integrate the public school system of Rapides Parish, Louisiana has been on trial since March 23, 1965. It is before us now on motions by the plaintiff and by the Government (intervenor) for additional relief. This school system is operating presently under our decree dated July 9, 1971, as amended. The decree was agreed to by plaintiffs and defendant. The Government took no appeal.

The issue presented by the motions is whether a unitary system ever was achieved. In our preliminary judgment of June 6, 1980 we recognized that the system was not unitary; that the plan of the Government's expert, Dr. Gordon Foster, was not acceptable and was rejected; that a suggested plan would be drawn by the Court, and that the filling of vacancies in the office of principal at several schools was enjoined pending further orders of the Court. Our suggested plan was filed on July 3, 1980, and comments and alternatives received. A suggested alternative to our original junior high school plan was filed and published on July 30, 1980. The hearing scheduled for August 1, 1980 was converted to a status conference since no additional evidence was offered.

We have considered all of the alternatives to our original plan as well as the responses and comments of the parties and others. Based on this consideration we adopt the following:

PLAN

The expertise of the undersigned consists of almost ten years experience as a Federal District Judge in an area not unfamiliar with the problems of school desegregation. The guidelines utilized are the product of this experience.

I. PREPARATION

The scope of the evidence in the case presented at the hearing beginning April 29, 1980 was limited to that part of the Rapides Parish School system located in Wards 1, 8 and 9 which comprised substantially less than the total Alexandria-Pineville metropolitan area. We have informed the parties that we consider the dimension of the matters at issue to be system-wide. Since the evidence did not contain information sufficient to evaluate the system outside Wards 1, 8 and 9 and since the data on those three wards was incomplete (pupil locator maps, etc.) we have utilized the services of Superintendent Nichols (white), Assistant Superintendent Townsend (white), and Assistant Superintendent Davis (black) to assemble and submit information as it was requested by us. This data can be identified as Court Exhibits 1-20. Court Exhibit 1 was requested by us from the Alexandria Daily Town Talk.

II. GUIDELINES

There is one all-encompassing purpose: the adoption of a plan which achieves the greatest amount of integration with a reasonably assured prospect of success. Our use of all guidelines set out below will be governed by their contribution to this essential purpose. When they fail to contribute they will be discarded.

1. *Busing.* Busing has been an essential element of our public school systems for many years. A parent will accept extensive busing to achieve an objective which he approves. He will protest busing for purposes which he disapproves even though the distance be short. Hence, it is not the busing itself but the specific purpose which he approves or disapproves. The plan

will utilize busing purposefully and constructively. Busing must be racially non-discriminatory.

2. *Neighborhood Schools.* We recognize that neighborhood schools in metropolitan areas should exist but only to the extent that they do not impair or inhibit the establishment of an integrated school system. They do not exist outside metropolitan areas. We recognize also that the neighborhood concept is fundamental and most important in the early years of school and that it becomes progressively less important as the pupils become more sophisticated in the later years of elementary school and in junior high school and high school. We shall recognize the neighborhood concept but only to the degree that it does not hinder or inhibit the establishment of a unitary system.

3. *Practicality.* We shall use all tools lawfully available for our purposes. We shall not adopt measures which are lawful, but have no reasonable prospect of success. We shall give due recognition to physical circumstance and to individual interests as they exist which can exert a substantial impact on our prospects of success, and design remedies which will accommodate, where possible, such circumstances and individual interests.

Although we shall carefully balance the equities between the black and white communities, this is not an end within itself and must give way if it constitutes a substantial obstruction to the successful implementation of the plan.

4. *School Construction.* Construction of new school buildings, disposition of old school buildings and school sites can substantially affect the development of a unitary system.

III. SPECIFIC PROPOSALS

Although revision of pupil assignments was the principal additional relief requested we have restated other elements of the plan which have been established in plans previously approved in these proceedings.

1. *Pupil Assignment.* At the close of the 1979-80 school year Rapides Parish Public Schools were attended by 25,049 stu-

dents, 8,942 of whom were black and 16,107 white. This figure includes the enrollment of three schools which are not properly part of the integration plan. Kelso-Twin Cities is an alternative school having a total enrollment of 126 students — 36 black and 90 white. Lakeside Elementary is a school for trainable mentally retarded children having 92 black and 61 white. St. Mary's is a Catholic institution for mentally retarded children to which the Rapides system contributes a total of 148 students — 21 black and 127 white.

PUPIL MEMBERSHIP AS OF MAY 31, 1980

SCHOOLS	PUPILS			TOTALS
	B	%	W	
Aaron Elem.	279	(100.00)	0	279
Acadian Elem.	273	(100.00)	0	273
Alexandria Jr. High	256	(43.7)	329	585
Alexandria Sr. High	409	(33.2)	820	1229
Barron Elem.	8	(1.5)	523	531
Bolton High	429	(43.4)	559	988
Boyce Elementary	195	(40.8)	283	478
Brame Jr. High	309	(38.4)	496	805
Brasher Elem.	176	(43.0)	234	410
Buckeye Elem.	0		602	602
Buckeye High	0		704	704
Cherokee Elem.	53	(12.0)	385	438
Forest Hill Elem.	26	(8.3)	285	311
Glenmora Elem.	60	(21.4)	220	280
Glenmora High	69	(27.0)	186	255
Mary Goff Elem.	35	(5.0)	669	704
Horseshoe Dr. Elem.	130	(33.8)	254	384
Huddle Elem.	175	(44.6)	217	392
Jones St. Jr. High	779	(93.9)	56	835
Kelso-Twin Cities	36	(28.5)	90	126
Lakeside Elem.	92	(60.1)	61	153
Lecompte Elem.	230	(61.5)	144	374

PUPIL MEMBERSHIP AS OF MAY 31, 1980

SCHOOLS	PUPILS			TOTALS
	B	%	W	
Lincoln Road Elem.	274	(99.0)	3	277
Lincoln Road Prim.	209	(97.7)	5	214
Martin Park Elem.	125	(27.0)	339	464
Lessie Moore Elem.	108	(28.0)	279	387
Nachman Elem.	74	(17.0)	362	436
N. Bayou Rapides	108	(24.7)	329	437
Oak Hill High	4	(.3)	1004	1008
Paradise Elem.	11	(1.5)	687	698
Peabody Elem.	375	(100.00)	0	375
Peabody Magnet	628	(65.6)	329	957
Pineville Elem.	50	(10.6)	419	469
Pineville High	189	(17.8)	868	1057
Pineville Jr. High	81	(13.7)	508	589
Plainview High	0		357	357
Poland High	30	(9.6)	281	311
Rapides High	138	(44.2)	174	312
Carter Raymond Jr. High	218	(62.1)	133	351
Reed Avenue Elem.	195	(75.8)	62	257
Rosenthal Elem.	154	(49.4)	158	312
Ruby-Wise Jr. High	11	(3.6)	294	305
Rugg Elem.	105	(35.6)	190	295
St. Mary's	21		127	148
Silver City Elem.	423	(100.00)	0	423
Slocum Elem.	117	(33.0)	238	355
S. Alex. Elem.	414	(99.5)	2	416
S. Alex. Primary	249	(99.6)	1	250
Tioga High	240	(23.6)	775	1015
Tioga Jr. High	13	(1.4)	872	885
Wettermark High	174	(49.1)	180	354
Lincoln Williams Elem.	185	(92.9)	14	199
TOTALS	8,942		16,107	25,049

Total enrollment of the system, after subtracting those students attending Kelso-Twin Cities, Lakeside and St. Mary's is 24,622 students — 8,793 (35.7%) black, and 15,829 (67.3%) white.

The tables immediately below demonstrate that integration of the black student population in Alexandria has no reasonable prospect of success (it is overwhelmingly black) unless the entire metropolitan area of Alexandria-Pineville-Tioga and Ball is incorporated into the plan.

The evidence establishes that there is no concentration of white students available in the Cheneyville area to integrate Lincoln Williams Elementary (92.9% black). Consequently Lincoln Williams (K-8) must be closed and its student body must be assigned to other schools in the Lecompte area.

	B		W		TOTAL
Alexandria					
Elementary	3,791	(59.9%)	2,541	(40.1%)	6,332
Jr. High	1,344	(60.4%)	881	(39.6%)	2,225
High	1,466	(46.2%)	1,708	(53.8%)	3,174
TOTALS	6,601	(56.3%)	5,130	(43.7%)	11,731
Pineville-Tioga					
Elementary	339	(8.8%)	3,503	(91.1%)	3,842
Jr. High	95	(8.8%)	986	(91.2%)	1,081
High	429	(20.7%)	1,643	(79.3%)	2,072
TOTALS	863	(12.3%)	6,132	(87.7%)	6,996
Lecompte Area					
Elementary	468	(45.5%)	561	(54.5%)	1,029
Jr. High	142	(47.0%)	160	(53.0%)	302
High	217	(41.2%)	310	(58.8%)	527
TOTALS	827	(45.5%)	1,031	(55.5%)	1,858

We have previously declared our intention to resolve the student assignment problems of the entire parish. The two areas discussed above are the only remaining problem areas. The schools in all other parts of the parish have been successfully integrated and where racially identifiable schools remain, their existence is easily justified. Consequently, the following plan is

proposed for student assignment in the metropolitan and the Lecompte areas:

	1979-80		1980-81		
GROUP I	W	B	W	B	T
S. Alexandria Primary (K-2)	1	249 (99.6%)	1	297 (99.6%)	298
Nachman Elementary (K-5)	362	74 (17%)	315	162 (33.9%)	477
Rugg Elementary (K-5)	190	105 (35.6%)	171	93 (35.2%)	264
Huddle Elementary (K-5)	217	175 (44.6%)	193	132 (40.6%)	325
Rosenthal Elementary (K-5)	158	154 (49.4%)	163	104 (38.9%)	267
Lessie Moore Elementary (K-5)	279	108 (28%)	234	155 (39.8%)	389
Ruby-Wise Elementary (K-5)	294	11 (3.6%)	221	110 (33.2%)	331
S. Alexandria Elementary (6)	2	414 (99.5%)	189	149 (44%)	338
GROUP II					
Lincoln Road Primary (K-2)	5	209 (97.7%)	5	226 (97.8%)	231
Martin Park Elementary (K-5)	339	125 (27%)	297	173 (36.8%)	470
Horseshoe Drive Elementary (K-5)	254	130 (33.8%)	217	140 (39.2%)	357
North Bayou Rapides (K-5)	329	108 (24.7%)	218	169 (43.7%)	387
Brasher Elementary (K-5)	234	176 (43%)	199	156 (43.9%)	355
Cherokee Elementary (K-5)	385	53 (12%)	325	170 (34.3%)	495
Lincoln Road Elementary (6)	3	274 (99%)	202	162 (44.5%)	364
GROUP III					
Silver City Primary (K-2)	0	423 (100%)	0	323 (100%)	323
Mary Goff Elementary (K-5)	669	35 (5%)	469	180 (27.7%)	649
Paradise Elementary (K-5)	687	11 (1.5%)	399	108 (21.3%)	507
Pardue Road Elementary (K-5)			435	234 (35%)	669
Ball Elementary (K-5)			481	119 (19.8%)	600
Peabody Elementary (6)	0	375 (100%)	245	159 (39.3%)	404
GROUP IV					
Pineville Elementary (K-5)	419	50 (10.6%)	370	139 (27.3%)	509
Barron Elementary (K-5)	523	8 (1.5%)	447	131 (22.7%)	578
Slocum Elementary (K-5)	238	117 (33%)	210	149 (41.5%)	359
Reed Avenue Elementary (K-5)	62	195 (75.8%)	111	104 (48.4%)	215
Acadian Elementary (6)	0	273 (100%)	172	114 (39.8%)	286
GROUP V					
Poland Elementary (K-6)	281	30 (9.6%)	150	137 (47.7%)	287
Lecompte Elementary (K-3)	144	230 (61.5%)	223	185 (45.3%)	408
C. Raymond Jr. High (4-8)	133	218 (62.1%)	282	256 (47.5%)	538
Rapides High (9-12)	174	138 (44.2%)	310	217 (41.1%)	517
GROUP VI					
Alexandria Jr. High (7-8)	329	256 (43.7%)	389	288 (42.5%)	677
Brame Jr. High (7-8)	496	309 (38.4%)	497	339 (40.5%)	836
Jones Street Jr. High (7-8)	56	779 (93.3%)	422	313 (42.6%)	735
Tioga Jr. High (7-8)	425	11 (2.5%)	342	237 (40.9%)	579
Pineville Jr. High (7-8)	508	81 (13.7%)	364	262 (41.9%)	626

Note: It is also part of the plan that white principals be appointed by defendant School Board at Acadian, Lincoln Road, Peabody and South Alexandria elementary schools and Jones Street Junior High School and that black principals be appointed at Ball, Mary Goff, Lessie Moore elementary schools and at Pineville Junior High School.

Note: See Appendix "A" for description of school zones.

This plan achieves our sole purpose, the greatest amount of integration with a reasonably assured prospect of success.

a. We have utilized our equitable tools to the fullest extent.

b. Dr. Foster's rejected plan described 21 elementary schools in the metropolitan area. Of these, 18 had a black population in excess of 48.7%. Twelve were majority black. It is our experience that racially identifiable schools located in underprivileged (black) portions of the metropolitan area have no reasonable prospect of successful integration with student ratios shown in the Foster plan. Much of this was induced by limitations placed on Dr. Foster. By comparison, the prospects for successful integration under this plan are dramatic.

c. 100% of the black student population in the parish will attend integrated schools for ten of the thirteen years of their education. 90.4% will attend fully integrated public schools for the entire thirteen years of their public education. Any one of the 9.6% may attend integrated schools for the entire thirteen years by exercising his right of transfer under the majority to minority rule. Thus all black students in the metropolitan area may attend integrated public schools for the entire thirteen years of their public education if they wish to do so. 100% of the black students outside the metropolitan area are assigned to integrated schools for the entire thirteen years of their public education.

d. The method used to integrate the elementary schools in Groups I-IV is generally the same. In Group I, for instance, grades 3-5 in Nachman, Rugg, Cherokee and South Alexandria Elementary were clustered. Thus each school would ordinarily become a one-class school with students from all schools in one class attending one school, and the entire class (from all four

schools) bused to a different school each year. We determined that better attendance by whites would be assured if schools in the black area became 6th grade schools, each integrated class having attended school together in grades 3, 4 and 5. We were also aware that busing the entire class to a different school in the white area for grades 3, 4 and 5 would accomplish nothing for integration and that both blacks and whites would be better served if the class from the school in the black area were split in three sections with each section attending one school in the white area for a period of three years. Blacks and whites alike would benefit from attending the same school for 3 out of the 4 years during which the class was clustered. It would also reduce the busing of whites. All students, whether clustered or not, attend the 6th grade in one of the four 6th grade centers in the black area.

e. Neither the plaintiff nor the government has objected to the proposed student assignment plan except as follows:

The plaintiff has reurged the pairing alternative suggested in the August 25, 1970 decree of the Court of Appeals. However, plaintiff has submitted no evidence, no authorities in support of this alternative. We have examined this plan. It is fragmentary, out of date, and uses schools which no longer exist. It is incomplete and deficient in that it does not mention the following elementary schools: Acadian, Silver City, Aaron Street, Horseshoe, Cherokee, Nachman, Huddle, Brasher, North Bayou Rapides or any of the schools in Pineville or Tioga. We reject this alternative.

The Government objects to the transfer of black students in grades 1 and 2 from Acadian, Peabody, and Aaron to Silver City and Lincoln Road Primary. We have adopted, reluctantly, the Government's suggestion that these students be transferred to majority white schools because this transfer will increase materially the ratio of black students in Wards 9 and 10.

We have adopted the Government's suggestion that the Ruby-Wise 6th grade be sent to one of the 6th grade centers, but have rejected the Government's suggestion that Ruby-Wise grades 1-5 be paired with Reed Avenue. Although the

present ratio of Reed (75.8% black) must be relieved, we are opposed to the pairing with Ruby-Wise if any other viable alternative will serve. Such pairing will render the role of Ruby-Wise far more burdensome than any of the other elementary schools north of Red River.

In lieu of the pairing suggested, we converted Reed into a majority white (48.4% black) school. To accomplish this we assigned Old Karst Park No. 1 to Ruby-Wise. These students previously were being bused to Reed and Rosenthal. We assigned to Reed students (white) from the area lying between Highway 1 and the river north of the present Reed Zone. In addition we assigned to Rosenthal that portion of the present Reed Zone lying east of Monroe Street.

f. All of the objections made by the Board have received our serious consideration. Those alternatives relating to grades 6-8 in the metropolitan area are unacceptable for one of two reasons. Either they abolish Jones Street as a junior high school or they utilize some schools for special purposes. Both alternatives are unfair to the black community.

However, the suggested alternatives for Group V have compelled changes in our original plan. We are impressed by and have given very careful consideration only to those objections pertaining to the closure of Lincoln Williams (Cheneyville), Poland and Forest Hill. We have now decided that the campus of Carter Raymond (Lecompte) is insufficient to accommodate the student population previously assigned it. We determined that Poland should be reopened for grades K-6, assigned to it those same grades in Lincoln Williams. This brought a heavy black ratio to Poland which we reduced by allowing a number of Lincoln Williams students (64 blacks and 12 whites) to remain at the Lecompte Elementary Schools. Poland grades 7 and 8 will attend Jones Street and Poland grades 9-12 will attend Rapides High.

We rejected the suggestion that Lecompte Elementary be closed and replaced by Forest Hill. Although the Forest Hill plant is more modern, Lecompte Elementary is very well maintained, and a very adequate educational facility. It has

much the better location for the purposes of integration. Forest Hill draws the bulk of its population from the area between Forest Hill and Lecompte. They bus almost as far to go to Forest Hill as they would to Lecompte. Woodworth students have bused voluntarily to Lecompte for many years and their bus routes are much more arduous than those from Forest Hill will be. For these and other reasons Forest Hill should remain closed.

g. As we informed all persons who have conferred with us since the publication of our original plan, we were not satisfied with the alternative (closing Tioga Junior High) or any of our other alternatives regarding junior high schools. We have considered all of the many alternatives submitted. Some of them, as we have stated previously, closed Jones Street as a junior high school, others involved one grade schools, or the substitution of special purpose schools in the black area in lieu of general purpose schools. Our original plan had the very objectionable feature of closing Tioga Junior High School, making the role of that single community far more burdensome than the other junior high schools in the metropolitan area. Consequently, we have adopted our own alternative published July 30, 1980. Although this plan also has deficiencies, it is far better than any of the alternatives suggested. It relieves Tioga of the inequities of the original and spreads the burden of busing far more evenly in other areas.

It should also be noted that Jones Street Junior High School would have a total population of 735 students, 313 (42.6%) of whom are black. The population assigned to Jones Street Junior High is drawn from the following areas:

WARD 1:	Jones Street Area (Zone A)	313
WARD 9:	Down-Town Pineville (Zone D)	53
	Holiday Park Area (Zone C)	47
WARD 10:	Kingsville Area (Zone G)	83
	Village Green (Zone C)	34
WARD 11:	Libuse to Holloway (Zone B)	87
	Lake Hills (Zone C)	12
	Ruby-Wise (Zone F)	53
WARD 2:	Poland (Zone E)	53

Although this parish first encountered integration problems in 1965, and has had an active history of integration endeavor since that time, the Buckeye schools have shouldered no responsibility. Out of a combined population of 1306 students, 87 are being assigned to Jones Street. They, like all the other students so assigned are already bused, their buses simply are being turned in another direction. They are the students in each ward that are nearest to Jones Street. We find this alternative to be the most equitable at our disposal.

h. The record discloses that all high schools in the metropolitan area are well integrated. The intervenor complains that the attendance figures in Peabody Magnet School are misleading because many of the white students, because of courses requiring them to spend a substantial amount of time off-campus in offices and shops, are not full-time students. The school system has lost many white students in the past through unsuccessful efforts to integrate Peabody High School by student assignment. Any method of clustering or pairing is educationally destructive and would jeopardize progress at the other high schools which are well integrated. The alleged deficiencies can be remedied by additional effort within the magnet school concept. The School Board cannot effectively begin this task while implementing the balance of this plan prior to the commencement of the 1980-81 school year. Appropriate plans and recommendations should be submitted by the School Board prior to January 1, 1981.

A committee to commence these activities will be appointed, after consultation with the Board, on or before October 1, 1980.

Mr. Eugene Millet has just been appointed assistant superintendent for instruction. We intend to appoint him chairman of the committee. As a member of the staff, and as a specialist, he is uniquely qualified to act. Other members of the committee will be appointed after we have consulted Mr. Millet. Annual progress reports will be submitted by the committee.

None of the parties have [*sic*] opposed this plan.

i. In order to make the plan more acceptable to blacks and whites alike it is required that the principals in Ball, Mary Goff

and Lessie Moore Elementary Schools and Pineville Junior High School be black and that the principals in South Alexandria, Lincoln Road, Peabody and Acadian Elementary be white. This policy shall be maintained unless waived by special order of this Court.

2. *School Construction.* The construction of new schools in outlying portions of the metropolitan area hinders and inhibits integration. No school site shall be selected, no school construction begun, no school facility disposed of (including leased) and no school facilities shall be enlarged (by portable classrooms or otherwise) without the express approval of this Court.

3. *Designation of Faculty and Other Staff.* The *Singleton* ratio of faculty and staff (31.5) as stated in our previous decrees is confirmed and shall be maintained. More specifically, the ratio of black principals shall be filled by priority at the beginning of each school year unless waived by special order of this Court. It has come to our attention that the ratio is one short, so that the first principal now to be appointed must be black.

The current policy that a minority assistant principal must be appointed as soon as the number of minority students in a school reaches 20%, is now rescinded. This policy, though helpful in the past, has resulted in over-staffing in some instances, and under the plan now adopted, is no longer necessary. It is now ordered that in each school the assistant principal be of the race other than that of the principal of that school.

4. *Enforcement.* We shall use every means possible to assure that students in the system attend only those schools to which they have been assigned.

5. *Policy.* Policies previously adopted by this Court (Transportation, Majority-to-Minority Rule, etc.) are hereby reaffirmed unless specifically rescinded (Student Assignment) by this plan.

APPENDIX L

UNITED STATES DISTRICT COURT,
W. D. LOUISIANA,
ALEXANDRIA DIVISION.

JUNE 6, 1980.

CIV. A. NO. 10,946.

VIRGIE LEE VALLEY, ET AL.

v.

RAPIDES PARISH SCHOOL BOARD.

PRELIMINARY OPINION

This matter has been under trial in this court since March 23, 1965 and is now before us on motions by the plaintiffs and by the intervenor for additional relief. Because of the findings made below, and because additional evidence will be necessary to the rendition of final opinion, we have issued only a preliminary opinion:

1. It is conceded that there are a number of racially identifiable schools in the Rapides Parish school system. We find from the record that the existence of all of the racially identifiable schools has not been justified as contemplated under *Swann v. Charlotte-Mecklenburg Bd. of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); that the Rapides Parish school system is not unitary and that additional relief must be granted, *Lee v. Macon Cty. Bd. of Education*, ____F.2d ____ (No. 79-2499, 5th Cir. 1980).

2. The plan of Dr. Gordon Foster, submitted on the behalf of the intervenor, was limited by instructions of the intervenor to Wards 1, 8 and 9 of Rapides Parish, utilized standards of doubtful validity (discussed greater detail in final opinion); dismantles without reason or discussion substantial progress that has been made in the integration of many of the schools subject to that plan. Dr. Foster himself admitted to the Court after his cross-examination that the limiting instructions of the intervenor rendered his plan deficient. It fails to consider the school

system as a whole (it does not even cover the entire metropolitan area of Alexandria-Pineville). He conceded that it could not serve as a vehicle to end this fifteen years of litigation. The plan is rejected.

3. Because of the abbreviated period to the opening of the Fall term of school and the time necessary to implement a proposed plan, we have determined that the plan will be drawn by the Court itself. Notice of this intent has already been furnished to parties of record, Exhibit A attached.

4. We have taken judicial notice of a news item in the Alexandria Daily Town Talk to the effect that vacancies in the office of principal exists [*sic*] in several schools and must be filled. The filling of these positions may have an effect on the plan to be adopted by the Court and no steps should be taken by the defendant Board in filling these positions pending further orders of the Court.

Alexandria, Louisiana, this the 6th day of June, 1980.

NAUMAN S. SCOTT

UNITED STATES DISTRICT JUDGE

EXHIBIT A

June 3, 1980

Mr. Louis Berry
Attorney at Law
1406 Ninth Street
Alexandria, LA 71301

Mr. John Ward
Attorney at Law
P. O. Box 65236
Baton Rouge, LA 70896

Mr. Franz Marshall
U. S. Department of Justice
Washington, D. C. 20544

RE: Virgie Lee Valley, et al
VS: Rapides Parish School Board
NO: Civil Action 10,946

Gentlemen:

I have not drafted an opinion in the captioned suit but I have decided that additional relief should be granted. I have decided that the plan of Dr. Foster is completely unacceptable for a number of reasons, the main one being, of course, its limitations to Wards 1, 8 and 9. I feel that the plan and my judgment, if it is to be final, must make comment and take appropriate action on the system as a whole. I also feel that I am the best expert that I know and I intend to draw this plan myself. Consequently, I will need a great deal more information from the School Board. I intend to meet with Mr. Nichols and Mr. Davis and request of them at least the following:

(1) Student assignment of all schools in Rapides Parish and capacity of each school;

(2) Identification of all schools built in the parish since 1971, the capacity of each, and the area from which each draws its students. This includes two elementary schools which I understand have been built in Ward 10 and are scheduled to open in the Fall of 1980.

(3) All action (including resolutions) taken by the School Board since January 1, 1979 regarding the voluntary attendance zones existing in Wards 9, 10 and 11, along with the school attendance of students in that area on January 1, 1979, at the opening of school in the Fall of 1979, the opening of the second term in 1980, and the projected attendance for the upcoming school term opening in the Fall of 1980. This to be accompanied by maps.

(4) Detailed disclosure and analysis of majority-to-minority transfers. This will include the home address (school zone) of each transferee in each of the schools involved. It should also designate grades.

(5) Parishwide map or maps showing the location of each school with the zones established by judgment of the Court shown on these maps. Although the map need not disclose this information, the map should be accompanied by information showing bussing routes and the number of students bussed as

well as distances between certain schools which I shall designate.

This is what I need at present. I might request additional information when I meet with Mr. Nichols and Mr. Davis.

I am taking this unusual method of contacting you because time is of the essence and I feel that the School Board will need as greater [*sic*] period as possible to carry out my projected order.

Yours very truly,

NAUMAN S. SCOTT
Chief Judge

sd

Cc: Mr. Allen Nichols
Mr. Douglas Jenkins

APPENDIX M

UNITED STATES DISTRICT COURT,
W. D. LOUISIANA,
ALEXANDRIA DIVISION.

JUNE 6, 1980.

CIV. A. NO. 10,946.

VIRGIE LEE VALLEY, ET AL.

v.

RAPIDES PARISH SCHOOL BOARD.

PRELIMINARY JUDGMENT

For written reasons this day assigned, it is:

ORDERED that the motions of plaintiff and intervenor for additional relief be granted; and

FURTHER ORDERED that the plan of Dr. Gordon Foster be and is hereby rejected; and

FURTHER ORDERED that information and data for the drafting of a system-wide plan be submitted by the defendant School Board to the Court as and when requested; and

FURTHER ORDERED that any steps or procedures by the defendant Rapides Parish School Board to fill vacancies in the office of principal at any of the schools in the system be and they are hereby stayed and enjoined pending further orders of this Court.

Alexandria, Louisiana, this the 6th day of June, 1980 at 11:30 o'clock A.M.

NAUMAN S. SCOTT

UNITED STATES DISTRICT JUDGE

APPENDIX N

RESPONSE OF THE RAPIDES PARISH SCHOOL BOARD TO DISTRICT COURT'S PROPOSED PLAN OF DESEGREGATION FOR RAPIDES PARISH

[July 28, 1980]

Another area of poor utilization of existing facilities in the Court's proposal is found in the Poland, Chaneyville, Lecompte, and Forest Hill area. The Court's proposal orders the closing of both Forest Hill Elementary and Poland High School while attempting to utilize much older and less desirable facilities in this area.

Forest Hill Elementary School (presently K-8) is a modern single-storied structure consisting of sixteen classrooms, a library, a lunchroom, all of which are completely air-conditioned. In addition there is a complete gymnasium. More than adequate playground space is provided on the spacious ten-acre site which includes two baseball-softball fields, one of which is completely lighted. Under the Court's proposal, Forest Hill Elementary would be closed and those children sent to older, less acceptable, facilities in Lecompte. For example, Lecompte Elementary is an older three-story building built in 1923. There are also problems at that school because of congested traffic, narrow streets, inadequate parking, etc. For further information as to the educational and administrative unsoundness of the Court's proposal with respect to Forest Hill Elementary, please see Exhibit "H" attached hereto submitted by Board Member Holloway.

With respect to the Poland area, it must be pointed out that the Court's proposal also requires abandonment of an excellent facility in which the Board has a substantial financial investment. The Poland School, serving grades K-12, is worth approximately $3,000,000.00 and is completely air-conditioned. Although the school has been in existence in the Poland community since before 1900, recent additions and renovations have kept it as a first class facility, perhaps one of the

best in Rapides Parish. As recently as 1974, the Poland community voted a bond issue of $650,000.00 to be paid over a 15 year period.

In addition, the Poland School also has a locker plant that is funded through the agricultural department. This facility is utilized in conjunction with the high school, vocational, educational programs and is a tremendously important part of the high school program and the Poland community. We would respectfully submit, therefore, that closing and abandoning Poland High School as suggested by this Court's proposal is totally unsound from both an educational and administrative viewpoint.

For further information, comments and suggestions with respect to this area of the Court's proposal, we would respectfully refer the Court to the * * * submission by Board Member Kellogg attached hereto as Exhibit "H".

/s/ John F. Ward, Jr.

APPENDIX O

INDIVIDUAL RESPONSE OF SCHOOL BOARD MEMBER HOLLOWAY

This will be a proposed plan for the Forest Hill School District to replace the plan submitted by Judge Scott. Although this is not the only school in my school board District (H) affected by the plan, this proposal will not include the other schools, namely Martin Park Elementary School. Since it lies in the metropolitan area of Alexandria, any plan affecting the other schools in Wards 1 and 8 would in effect involve Martin Park.

I feel that the Forest Hill Elementary School situation is uniquely different from any other school involved in Judge Scott's proposed plan. The Forest Hill School is the only school serving School District 16 as re-established in 1946. It serves the area indicated on the attached map. (See attached K-8 map.) *All* students, black and white, within the designated area attend this school.

Forest Hill Elementary School is a modern single-storied structure consisting of sixteen (16) classrooms, a library, and lunchroom, all of which are completely air-conditioned. In addition there is a complete gymnasium. More that [*sic*] adequate playground space is provided on the spacious ten (10) acre site which includes two (2) baseball-softball fields, one of which is completely lighted.

The schools to which our children would be assigned under the Scott plan can in no way offer the same facilities as evidenced by the fact that our K-2 students would be bussed to a three-story structure constructed in 1923. In addition the 3-8 students would be going to a school that is not completely air-conditioned and portions of which are in disrepair. Another inadequacy that needs to be pointed out is the restroom facilities.

Additional problems that need to be brought to the attention of the Court are the congested traffic, narrow streets, open ditches, poor drainage, and inadequate parking around the two

(2) schools in Lecompte. None of these problems exist at Forest Hill Elementary School. In contrast, we have more than sufficient parking space and loading and unloading area available in both fair and foul weather.

Maintenance money in the two (2) schools in Lecompte has in the past been a problem partly because of the failure of three (3) out of the last four (4) school tax issues in this district. This has not been a problem in the Forest Hill school district as the people have always supported school taxes in District 16.

The safety factor *alone* should convince the Court to reconsider its proposed plan. The one-story structure at Forest Hill is far superior to the three-story structure of Lecompte Elementary.

Although many would contend that we are asking for the status quo, please be reminded that we were the ones that took the blunt [*sic*] of the last court ordered desegregation plan. We accepted it and although we may not have liked the situation, we made it work to the extent that the integration situation had become very stable in Forest Hill, Lecompte Elementary, Carter C. Raymond, and Rapides High School. As a matter of record, we in the Forest Hill school district have been busing our grades 9-12 students to Rapides High School and/or Carter C. Raymond for the last thirteen (13) years.

In conclusion, after looking at the entire picture, I cannot see how any plan could in any way increase the educational opportunity provided for any student in the schools affected. Therefore, I encourage the Court to reconsider and leave the Forest Hill school district as is.

/s/ Charles Holloway

APPENDIX P

INDIVIDUAL RESPONSE OF SCHOOL BOARD MEMBER KELLOGG
[July 24, 1980]

I wish to exercise the privilege of filing an individual response to U. S. District Judge Nauman S. Scott's plan in the form of an alternative method of student assignment for Group No. 5 — Poland, Lincoln Williams, Lecompte, Carter C. Raymond and Forest Hill.

This alternative has a racial composition in each school which is comparable to the mix in the Court's plan. Additionally it allows the communities of Lecompte, Forest Hill and Poland to retain a neighborhood facility.

The necessary level of racial mixing necessitates discontinued use of at least two schools. It is recommended that Lecompte Elementary and Lincoln Williams be closed. The particular facilities to be eliminated was a serious decision based on a variety of factors:

1. In the case of Lecompte Elementary, age, condition, and community perception of the facility were taken into account. Another important factor was that the proximity of Carter C. Raymond, and the decision to use that facility, meant that Lecompte maintained a neighborhood school. Indeed, one could go so far as to envision the two campuses being combined for greater use of public property.

2. In the case of Cheneyville, a study of racial composition of the town as compared to the racial composition of the public school was made. These figures indicate that a significant incidence of white flight has occurred in Cheneyville, a situation which this School Board cannot ignore.

The combination of the Forest Hill School and Lecompte's Carter C. Raymond was based on the participation of these communities in forming Tax District #61, a political alliance sanctioned by public vote. The combination of Poland and Lincoln Williams was based on distance, capability of physical combinations and resulting racial mix. In all instances an effort

was made to minimize time and distance children would be bused.

This alternative is therefore submitted to accomplish three specific purposes:

1. Achieve an acceptable racial mix in facilities which best accomodate [*sic*] equal educational opportunities for all students.
2. Maintain as many neighborhood schools as possible.
3. Keep busing to a minimum.

/s/ Jo Ann W. Kellogg

PROPOSED RE-ALIGNMENT OF GROUP 5 SCHOOLS
[Board Member Kellogg]

Lincoln Williams — Close

Lecompte Elementary/Carter C. Raymond — Combine campuses to serve 4 - 8 for students of Lecompte Elementary, Carter C. Raymond and Forest Hill.

Forest Hill — (K - 3) for students of Forest Hill and Lecompte Elementary.

Immediate Racial Make-Up —

		Bl.	Wh.	Total
Lec.El/C.C.R.	4 - 8	215 (43.5%)	279	494
Forest Hill	K - 3	163 (43.0%)	216	379

Comparative Busing

Above Vs. 1979 - 80

218 from Cheneyville (12.6 mi) to Poland vs busing or walking to Lincoln-Williams.

251 from Lecompte to Forest Hill (10 mi) vs busing or walking to Lecompte.

176 from Forest Hill to Lecompte (10 mi) vs busing or walking to Forest Hill.

Rapides High — basically unchanged.

Poland — basically unchanged.

Above vs. Court plan

251 from Lecompte to Forest Hill (10 mi) one stop — 176 from Forest Hill to Lecompte one stop Vs. 304 from Forest Hill to Lecompte (3 stops) and 563 busing or walking to Lecompte/ C.C. Raymond.

In addition to apparently meeting the criteria of racial balance desired by plaintiffs and courts, and minimizing the undesirable longer distance and more intense busing of children, we also feel it has the advantage of providing a better, more desirable educational environment for all involved — students, staff and parents — by best utilizing present facilities.

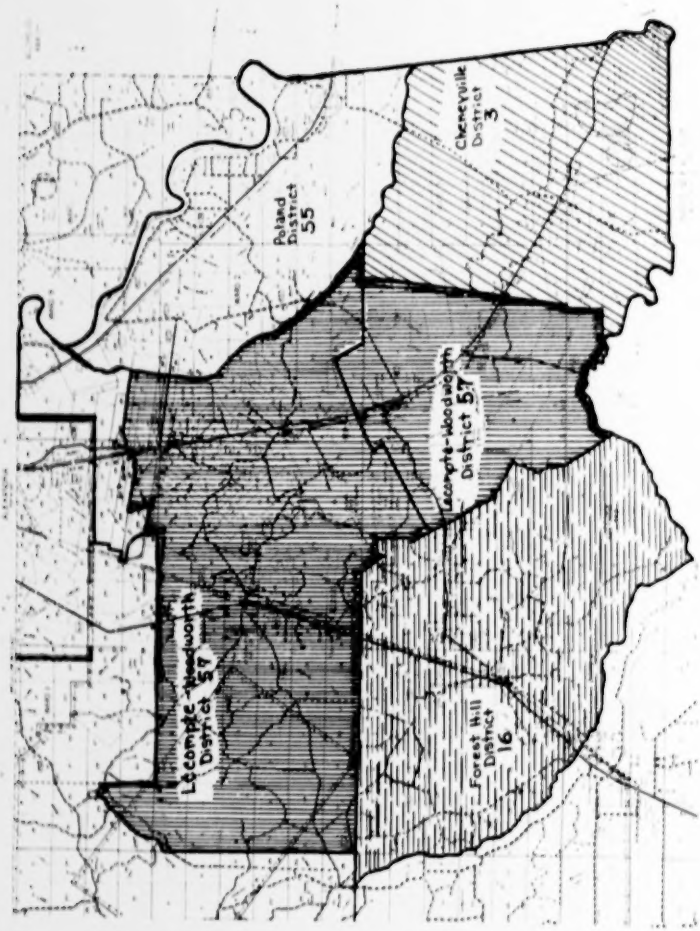
We respectfully submit the following reasoning and findings:

(1) The Court plan instructs that all Group 5 students attend class within the corporate limits of the Town of Lecompte. The population of the town of Lecompte is 1500. The increase in student population to be served would be 814 students plus approximately 80 staff and service personnel. Lecompte service systems are now pushed to their capacity (particularly as regards drainage and sewerage) and with present school enrollment problems with drainage and sewerage at Carter C. Raymond and with sewerage at Rapides High are known to exist. These problems do not exist in the other facilities in the group — particularly at Poland which has its own complete sewerage treatment plant.

(2) The campuses at Lecompte Elementary and Carter C. Raymond are located in a highly congested area within 1/2 block of each other. There presently exists problems with bus loading and unloading, staff parking, public access not only to the schools but to the residences surrounding the schools. These facilities are surrounded by very narrow streets. The addition of the volume of students to be added to these facilities will compound these problems immeasurably and create additional problems of safety both to the citizens of the community and the students and staff of the school facilities. These problems do not exist in the schools outside the Lecompte area.

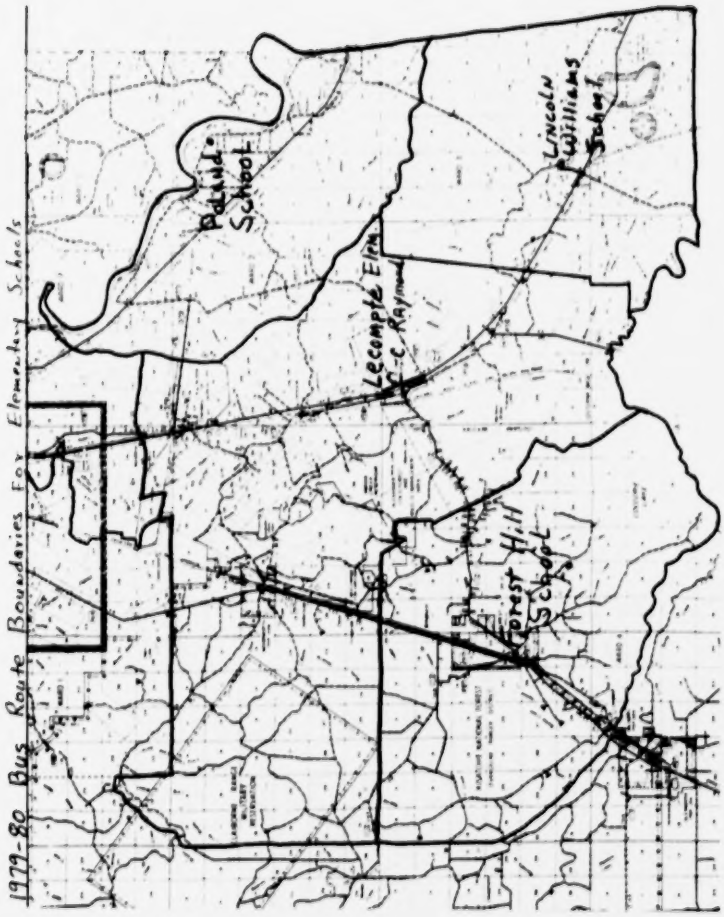
(3) The campus of Carter C. Raymond has classroom facilities which apparently would accomodate [*sic*] substantially more students than are now enrolled. However, the auxilliary [*sic*] facilities; such as, gymnasium, physical education, special education, physical size of playground and recreational or extracurricular activities, are insufficient to properly serve the present enrollment in this facility. There is no immediate adjacent area which could be converted to improve this.

APPENDIX Q



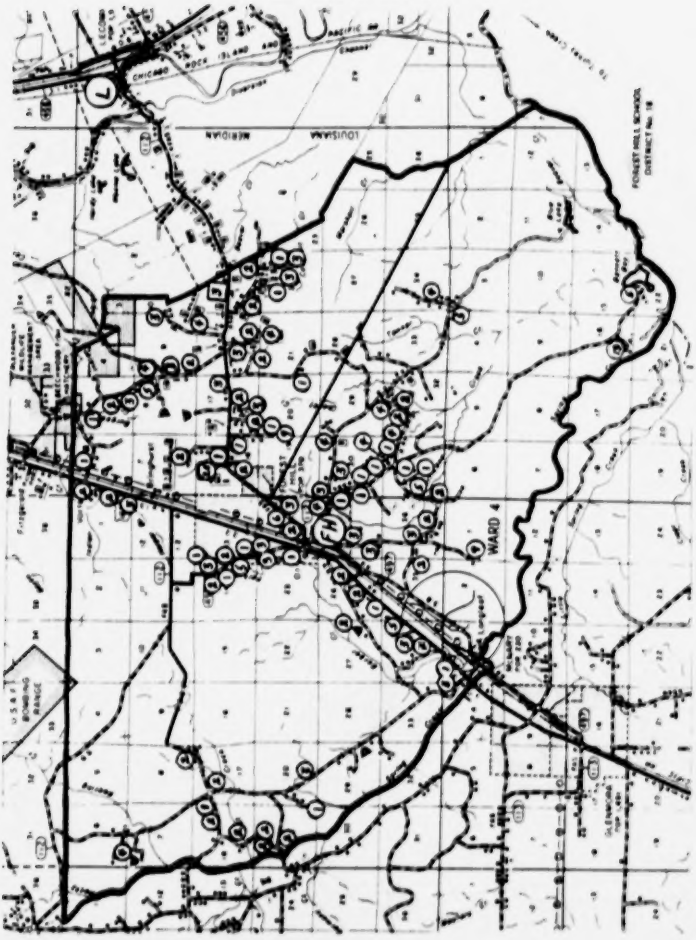
SOURCE: Louisiana State Department of Transportation map, showing Rapides Parish High School Consolidated Taxing District 61, and local school taxing districts.

APPENDIX R



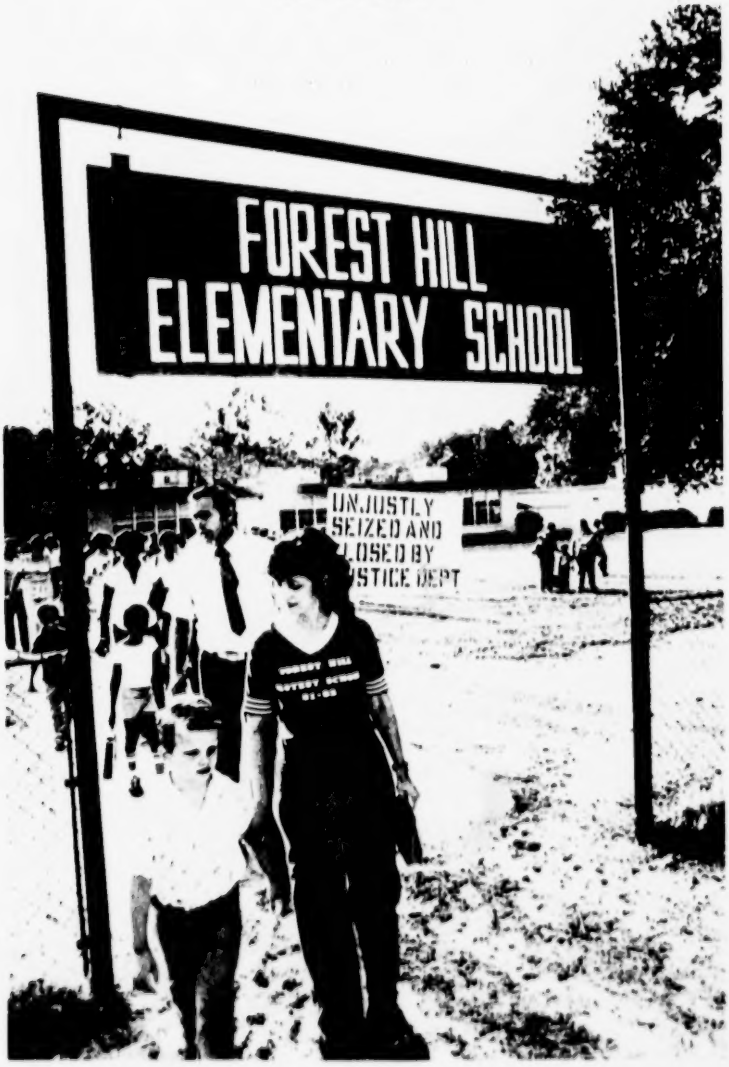
SOURCE: District Court Exhibit 26-B

APPENDIX S



SOURCE: Forest Hill Exhibit 13, admitted into evidence June 30, 1981. The location and number of former Forest Hill Elementary School students are shown in the small circles. Only 3 of 311 former Forest Hill Elementary School students (shown in small square) live closer to Lecompte than to Forest Hill.

APPENDIX T



SOURCE: Brief for Forest Hill [Fifth Circuit], *Forest Hill II*, p. 63.

Nos. 83-129, 83-289

In the Supreme Court of the United States

OCTOBER TERM, 1983

CLYDE HOLLOWAY, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL.

RAPIDES PARISH SCHOOL BOARD, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL., AND
UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
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QUESTION PRESENTED

Whether the district court abused its discretion in closing one predominantly black and one predominantly white elementary school in southeastern Rapides Parish, Louisiana, as part of a comprehensive plan to dismantle the Parish's dual school system.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases—Continued: Page

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-129

CLYDE HOLLOWAY, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL.

No. 83-289

RAPIDES PARISH SCHOOL BOARD, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL., AND
UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The court of appeals' opinion of March 30, 1983 (Pet. App. 1a-21a) is reported at 702 F.2d 1221. Its opinion of May 18, 1981 (Pet. App. 42a-75a) is reported at 646 F.2d 925. The district court's opinions of July 22, 1981 (Pet. App. 27a-40a) and June 6, 1980 (Pet. App. 95a-98a) are unreported. Its opinion of August 6, 1980 (Pet. App. 82a-94a) is reported at 499 F. Supp. 490.

JURISDICTION

The judgment of the court of appeals (Pet. App. 22a-23a) was entered on March 30, 1983. The petition for rehearing filed by the petitioners in No. 83-129 was denied on April 29, 1983 (*id.* at 24a-25a), and the petition for rehearing filed by the petitioners in No. 83-289 was denied on May 26, 1983 (*id.* at 26a). The petition in No. 83-129 was filed on July 26, 1983, and the petition in No. 83-289 was filed on August 22, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Prior to 1965, the public school system of Rapides Parish, Louisiana, was "classically dual, with one set of schools operated for white pupils and another for blacks" (Pet. App. 43a). On March 23, 1965, the private respondents, who represent black school children and parents in the Parish, filed this class action against the School Board, alleging that its dual system violated 42 U.S.C. 1983 and the Fourteenth Amendment. The United States intervened on August 17, 1965, pursuant to 42 U.S.C. 2000h-2.

In 1965, the district court approved a desegregation plan containing a "free transfer" provision. With minor modifications, it remained in place until 1969. From 1969 until 1971 various motions, appeals, remands and alternative plans were considered (Pet. App. 44a-46a). In 1971, the district court put into place another desegregation plan, which, with modifications, remained in effect until 1980 (*id.* at 46a).

The present proceedings were initiated in 1979, when the private respondents filed a motion for supplemental relief and the United States renewed its request for a hearing on a motion for supplemental relief it had previously filed. Following a hearing on these motions, the district court ruled that the system was still not unitary

and further relief was required (Pet. App. 82a, 95a). The court identified the metropolitan area of Alexandria and the rural southeastern area of the Parish as "the only remaining problem areas" (*id.* at 87a).

The court rejected a desegregation plan submitted by the United States and devised its own plan for desegregating these areas (Pet. App. 82a, 95a-96a).[1] Under the court's plan,[2] two elementary schools in the southeast portion of the Parish were closed: Lincoln Williams (predominantly black) and Forest Hill (predominantly white).[3] Students from these schools were by and large reassigned to schools in centrally located Lecompte, although some Lincoln Williams students were transferred to Poland School (*id.* at 87a, 91a-92a).[4]

The School Board appealed and applied for a stay pending appeal. The application was denied by the district court, the court of appeals, Justice Powell, and this Court (449 U.S. 811 (1980)).

2. The court of appeals concluded that the district court correctly applied the appropriate legal standards in finding further relief necessary (Pet. App. 58a). It also sanctioned most of the district court's desegregation plan. The court held, however, that the factual

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[1] The School Board did not submit a plan, apparently because it could not reach agreement on a specific proposal (83-289 Pet. 27), and the private respondents adopted the government's plan (Pet. App. 47a).

[2] This brief discusses only the court's plan and does not describe in detail the plan submitted to the court by the government.

[3] At the end of the 1979-1980 school year, Lincoln Williams was 92.9% black and Forest Hill was 91.7% white (Pet. App. 27a).

[4] Lecompte, the approximate center of the area affected by the desegregation plan that is disputed by petitioners, is located 9.7 miles east of Forest Hill, 9.1 miles northwest of Cheneyville (where Lincoln Williams is located), and 13.3 miles southwest of Poland (Pet. App. 29a, 75a).

findings supporting the portion of the plan involving the southeastern part of the Parish were insufficient to explain the choice of remedies there, and it remanded the case for further findings (*id.* at 65a-66a). This Court denied the School Board's petition for a writ of certiorari (455 U.S. 939 (1982)).

3. On remand, the district court ordered a hearing to permit the School Board to present additional evidence concerning desegregation in the southeastern part of the Parish. On May 21, 1981, the court granted a motion to intervene filed by the petitioners in No. 83-129, who are residents of the Forest Hill community. On June 30, 1981, the hearing ordered by the district court was held, and the court thereafter issued an opinion and final judgment on July 22, 1981, in which it adhered to its prior decision to close the Lincoln Williams and Forest Hill Schools (Pet. App. 27a-41a).

The court set forth in detail the grounds for its decision. The court explained its reasons for closing the primarily black Lincoln Williams School as follows (Pet. App. 29a-30a):

> There has been a gradual decline of student population at Cheneyville area (Cheneyville formerly had a white high school); and an almost complete exodus of white students from Lincoln Williams after the white school was integrated with Lincoln Williams in 1975. Poland is the only majority white school district accessible to Lincoln Williams. There was absolutely no likelihood that these students would attend Lincoln Williams when the whites in the Lincoln Williams district had already refused to do so. It was our finding that there was no reasonable prospect that Lincoln Williams could be integrated by clustering or pairing. Consequently we determined that Lincoln Williams must be closed.

The court then referred to the desirability of making maximum use of Lecompte schools in its desegregation plan (*id.* at 30a):

> Lecompte was centrally located, had radiating bus routes, many of which were already in operation. This would equalize the length and duration of bus routes as much as possible. Consequently we found that the assignment of all students to the Lecompte schools offered the best and the most reasonable prospect of successful integration in the area.

Finally, after noting that "[i]t was not fair to the black community nor legally proper that only identifiably black schools be closed for purposes of integration" (*id.* at 32a), the court turned to its reasons for closing Forest Hill (*id.* at 33a):

> Forest Hill is on the periphery of an area made up of Cheneyville, Forest Hill, Woodworth, LSU-A area and Lecompte * * *. Lecompte, on the other hand, is in the center. This was recognized by all these communities when they organized a consolidated school district for the purpose of constructing Rapides High School and locating that school in Lecompte. High School students from the Forest Hill area have been bussing [*sic*] voluntarily to Lecompete since the 1966-67 school year. It is certain that seventh and eighth grade students must attend the schools in Lecompte because of the excessive distance involved in assigning Cheneyville students to any other location * * *. Since the Forest Hill students are concentrated in the immediate Forest Hill area and on the road between Forest Hill and Lecompte the bussing [*sic*] burden on them would be minimal. The burden would be further minimized by the fact that Forest Hill grades 9-12 have been bussing [*sic*] to Lecompte previously and that grades 7-8 must also be assigned there. The elementary students would simply get on busses [*sic*] already loaded with their

> older brothers and sisters. Under these circumstances we found that the evidence as well as the law dictated that all Forest Hill students should be assigned to the schools in Lecompte * * *.

The court rejected all of the alternative proposals that had been presented to it, including a suggestion from the petitioners in No. 83-129 that Lincoln Williams and Forest Hill remain open as racially identifiable K-3 schools (Pet. App. 34a-35a)[5] and proposals from the School Board that involved the busing of blacks into Forest Hill (*id.* at 35a-36a).

4. A divided panel of the court of appeals affirmed. The majority concluded that the district court's decision to close the Lincoln Williams and Forest Hill Schools and to assign their students to the Lecompte schools was a reasonable exercise of its remedial authority (Pet. App. 8a, 15a). In the majority's view, "of all the proposals offered, [the district court's] plan can best be expected to achieve the mandated conversion to a unitary system" (*id.* at 15a).

Chief Judge Clark dissented. He was of the view that the district court had not complied with the court of appeals' 1981 mandate because it failed to consider the "'full range of mitigating, equitable circumstances'" before "reinstat[ing] the 'harsh remedy' of 'closing a facility built and maintained at the expense of local taxpayers'" (Pet. App. 17a).

ARGUMENT

The court of appeals did not err in affirming the district court's order to close the Lincoln Williams and Forest Hill Schools as part of its comprehensive plan for dismantling the dual school system in Rapides Parish. In an opinion on which we rely (Pet. App. 1a-15a),

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[5] The private respondents' principal proposal was that Forest Hill and Lincoln Williams remain closed. Transcript of hearing of June 30, 1981, at 7.

the court found that the district court had acted within its broad remedial authority in closing the two schools. The court of appeals' decision presents no novel legal issues. Rather, it involves only the application of settled legal principles to the facts of this case. The ruling below does not conflict with decisions of this Court or other courts of appeals and thus does not deserve further review by this Court.

1. The predicate for the only part of the district court's desegregation plan now at issue is its 1980 holding, previously affirmed by the court of appeals, that the continued maintenance of the predominantly black Lincoln Williams School in Cheneyville would prolong the existence of a dual school system in southeastern Rapides Parish. Given that ruling, some remedy was required. The issue presented by the petitions for a writ of certiorari is simply whether the district court abused its discretion in selecting a remedy that petitioners view as unnecessarily harsh. See Pet. App. 4a-5a.

The district court's plan to close Lincoln Williams and Forest Hill Schools and to reassign their students to the centrally located Lecompte area schools is a permissible exercise of its broad remedial authority. The court's plan effectively addresses the admitted need for further efforts to desegregate the schools in southeastern Rapides Parish and it does so in a manner best designed to distribute the burdens of desegregation evenly among children of both races. The plan undeniably makes efficient use of the available school facilities and does not significantly increase the amount of student transportation in this area of the Parish.[6]

[6] The petitioners in No. 83-129 assert (83-129 Pet. 11, 23) that the district court's order requires five-year-olds to take a 40-mile, two-hour bus trip. The petitioner School Board, however, makes no similar contention, and evidence supporting this

Contary to petitioners' contention (83-129 Pet. 27-32; 83-289 Pet. 25-27), the district court did not err in rejecting the other desegregation plans that had been submitted. The court considered each of those plans carefully (Pet. App. 34a-37a), and found that none of them would result in the elimination of all vestiges of the dual school system (*id.* at 34a). The court of appeals, on the basis of its own "painstaking review of the record" (*id.* at 13a), concluded (*id.* at 11a):

> None of the plans suggested by the school board or the Forest Hill intervenors adequately insure[s] a fair reconciliation of the competing interests involved. Some of the proposals would have unfairly burdened minority students. Others would in all probability have precipitated a reversion to the impermissible status quo—the perpetuation of Lincoln Williams as an essentially one-race school. None would spread equally the burden of desegregation.

It thus held that "of all the proposals offered, [the district court's] plan can best be expected to achieve the mandated conversion to a unitary system" (*id.* at 15a).[7]

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assertion does not appear in the record. See Pet. App. 13a-14a n.10.

The record does reflect that, under the court's order, the time and distance of busing for approximately 50 students living west and south of Forest Hill would be substantial. As the court of appeals indicated (Pet. App. 14a n.10), the district court, on proper motion, may wish to reconsider its assignment of these students to the Lecompte schools.

[7] In dissent, Chief Judge Clark proposed his own plan, a modified version of School Board Plan 3. Under that plan, children from predominantly black zones in the Lecompte area would be bused to Forest Hill; the Lecompte elementary school would be closed; and children from predominantly white areas in the Lecompte region would be bused to Lincoln Williams (Pet. App. 19a-20a). This plan, as modified by Judge Clark, was of course never presented to the district court. It has the drawback of closing a desegregated school (Lecompte Elementary),

The closing of a school facility over the objection of the School Board for purposes of desegregation is plainly not a measure that should often be used by courts. Here the district court was faced with the fact that 15 years of litigation in this case had failed to dismantle the dual school system in southeastern Rapides Parish. In these circumstances, the court was justified, after having first determined that other proposed measures held out little promise for meaningful desegregation of remaining one-race schools, to settle on a plan "that promises realistically to work, and promises realistically to work *now*." *Green* v. *County School Board*, 391 U.S. 430, 439 (1968); emphasis in original.

The development of a desegregation plan "is a delicate task that is aided by a sensitivity to local conditions, and the judgment is primarily the responsibility of the district judge." *Wright* v. *Council of Emporia*, 407 U.S. 451, 466 (1972). In this case, the district court found the plan under review to be the one with the best prospect of eliminating all vestiges of the dual school system, and the court of appeals concluded that the record supported that finding. Thus, this case primarily presents factual matters that, we contend, were correctly decided. This Court usually declines to review factual matters on which both the district court and court of appeals concur. See, *e.g.*, *Labor Board* v. *Waterman S.S. Co.*, 309 U.S. 206 (1940); *Allen* v. *Trust Co.*, 326 U.S. 630 (1946); *Graver Mfg. Co.* v. *Linde*, 336 U.S. 271 (1949). There is, we submit, no special

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and it assigns students on an explicitly racial basis. Most of the white students who attend Lecompte Elementary live in the area of Woodworth (*id.* at 35a), which is 11.0 miles northwest of Lecompte (*id.* at 29a). Under Judge Clark's plan, these students would be bused to Cheneyville, which is 9.1 miles southeast of Lecompte—a distance of more than 20 miles. Judge Clark's plan also is inconsistent with the district court's unchallenged finding that white students would not attend Lincoln Williams in Cheneyville (*id.* at 29a).

reason to warrant departure from that sound principle here.

2. The judgment below does not conflict with the decisions of this Court or of any other courts of appeals. None of this Court's school desegregation decisions holds or even suggests that a district court is precluded from closing school facilities as an exercise of its discretionary remedial authority where, as here, such closings are found by the court to offer the best prospect for dismantling a dual school system that has for too long been inattentive to the desegregation command.

To the contrary, in devising a remedy in a school desegregation case, a district court must seek to the extent practicable "to eliminate from the public schools all vestiges of state-imposed segregation." *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971). See also *Davis* v. *School Commissioners*, 402 U.S. 33, 37 (1971). That effort was concededly made here, and, contrary to petitioners' assertion (83-289 Pet. 15; 83-129 Pet. 12), none of this Court's decisions were, to our knowledge, violated in the district court's adoption of a plan designed to "achieve[] the greatest amount of integration with a reasonably assured prospect of success" (Pet. App. 83a).

Nor did the district court contravene any of this Court's decisions in taking "white flight" into account in developing a desegregation plan. In devising its plan, the district court found that there was "absolutely no likelihood" that white students from other communities would attend Lincoln Williams, because local white students did not attend that school when it was paired with a white school in Cheneyville in the 1970's (Pet. App. 29a). Fear of white flight may not alone be relied upon as an excuse for avoiding the use of remedial measures to uproot a dual school system. *E.g.*, *United States* v. *Scotland Neck City Board of Education*, 407 U.S. 484, 491 (1972). But this Court has never held that

the prospect of white flight should be disregarded altogether in fashioning a desegregation plan. If that prospect is sufficiently real under one plan to cause a district court to conclude—as occurred here—that community resistance to that plan would likely defeat the desegregation effort, then no decision of this Court prevents the adoption of a different plan, one better calculated to eliminate all vestiges of a dual school system through a judicious use of school closings.

The assertion of the petitioners in No. 83-129 (83-129 Pet. 20) that the court of appeals' judgment conflicts with the decisions of six other courts of appeals is patently incorrect. Four of the cited decisions[8] involve closings by school officials, and thus do not concern the authority of federal courts to close schools for desegregation purposes. *Morgan* v. *Kerrigan*, 401 F. Supp. 216 (D. Mass. 1975), aff'd, 530 F.2d 401 (1st Cir. 1976), involved school closings ordered by a federal judge, but, as the petitioners themselves recognize (83-129 Pet. 20 n.17), "no objection [was made] on appeal to [the] closing orders." *Haney* v. *County Board of Education*, 429 F.2d 364 (8th Cir. 1970), arose in an entirely different factual setting, *i.e.*, the merger of two school districts for desegregation purposes. *Haney* stands for the proposition that "decisions concerning utilization of school facilities are committed to the discretion of the school board (within constitutionally permissible limits)" (429 F.2d at 372). Nothing in that case, however, suggests that district judges may not close schools, where such closings are found by the trial court best suited, among the various alternatives available, to achieve the dismantling of a dual school system.

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[8] *Mitchell* v. *McCunney*, 651 F.2d 183 (3d Cir. 1981); *Allen* v. *Ashville City Board of Education*, 434 F.2d 902 (4th Cir. 1970); *Columbus Board of Education* v. *Pennick*, 583 F.2d 787 (6th Cir. 1978), aff'd, 443 U.S. 449 (1979); *Fitzpatrick* v. *Enid Board of Education*, 578 F.2d 858 (10th Cir. 1978).

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1983

In the Supreme Court of the United States

OCTOBER TERM, 1983

Nos. 83-129
83-289

CLYDE HOLLOWAY, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL.

RAPIDES PARISH SCHOOL BOARD, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY TO BRIEFS IN OPPOSITION

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INDEX

TABLE OF AUTHORITIES

In the Supreme Court of the United States

OCTOBER TERM, 1983

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83-289

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY TO BRIEFS IN OPPOSITION

Pursuant to Rule 22.5, petitioners CLYDE HOLLOWAY, et al. (No. 83-129), and RAPIDES PARISH SCHOOL BOARD, et al. (No. 83-289), file this joint reply to respondent Valley's and the United States Government's Briefs in Opposition.

First. Respondent Valley's Brief in Opposition materially misstates the law. Nothing in *Flax* v. *Potts* (Br. Op. 11) approves the busing of five-year-olds two hours a day. And this Court's opinion in *Swann* makes it clear that remedial power in desegregation cases is not wholly boundless. As Chief Justice Burger declared for a unanimous Court in *Swann*, 402 U.S. at 28, "it must be recognized that there are limits."

Second. Two material misstatements of fact taint the Government's Brief in Opposition.

A. The Government contends (Br. Op. 8) that the district court did not err in rejecting the other desegregation plans that were submitted on remand as alternatives to closing Lincoln Williams and Forest Hill Schools. The Solicitor General says (Br. Op. 8): "the [district] court considered each of those plans carefully."

The record shows precisely the opposite.

When this case was remanded to the district court, the private plantiffs proposed that Lincoln Williams and Forest Hill remain open as K-3 schools, a proposal that was supported by petitioners herein.[1] But the district court rejected this proposal peremptorily, not carefully, saying only "We cannot allow K-3 schools . . . ." On appeal to the Fifth Circuit, the United States conceded that the district court had misstated the law of the Fifth Circuit in this regard. U.S. Brief [Fifth Circuit], pp. 28-29 n.33. *See Lee* v. *Macon County Board of Education*, 616 F.2d 805, 812 (5th Cir. 1980). The decision of the panel majority below not only departs from prior Fifth Circuit case law, but is squarely at odds with the law of the Fourth Circuit:

"If certain proper circumstances may justify an entire

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[1] Transcript of hearing of June 30, 1981, at 7-8:

[Counsel for plaintiffs]: "We would submit that Lincoln Williams and Forest Hill be K through 3 schools. . . . The only reason why we propose that is because somewhere in the Fifth Circuit's order, I believe mention was made of the fact that the schools in the urban area were given the privilege of keeping their small children close to home; whereas this privilege was not extended to the children in the rural areas. For that reason we said if the court feels that there must be another plan, then that is the proposal.

THE COURT: "Well, the court did make that statement, that is right."

> school remaining of one race then, *a fortiori*, the same circumstances will justify the two lowest grades and kindergarten remaining predominantly of one race, especially considering the time of travel and age of the children."

Thompson v. *Newport News School Board*, 363 F.Supp. 458, 463-64 (E.D. Va. 1973), *aff'd* 489 F.2d (4th Cir. 1974)(en banc).

B. The Solicitor General says (Br. Op. 7 n.6) that there is no record evidence showing that the district court's order requires five-year-olds "to take a 40-mile, two hour bus trip."

To the contrary, the bus driver route sheets introduced into evidence as Forest Hill Exhibit 14 show that 181 former Forest Hill School students must be bused past Forest Hill School en route to Lecompte. These students are picked up as early as 6:45 a.m. and they are on buses nearly an hour en route to Lecompte. With respect to kindergarteners through third-graders, the uncontradicted testimony of Parks Sansing (Tr. June 30, 1981 Proceedings, p. 57) establishes that these pupils are bused an additional 2.2 miles and twenty to twenty-five minutes within the city limits of Lecompte as buses move from Lecompte Elementary to Carter C. Raymond and thence to Rapides High School before beginning the trip back to Forest Hill and beyond. Mary Miles, a black seamstress and mother of a five-year-old, testified (Tr. Sept. 17, 1980 Proceedings, pp. 30-31) that her son must be bused 30 miles round-trip under the district court's plan. And the School Board objected to busing "in some instances, busing kids forty miles, not just right next door." Tr. August 27, 1980 Proceedings, p. 27.

Chief Judge Clark in his dissent categorically states (Pet. App. 17a-18a):

> "These children, ranging in age from kindergarten through early elementary grades, must rise early, board

> buses, drive past their community school houses and go to a distant town and then reverse the journey in the evenings. Some will spend two hours a day on the school bus."

With all respect to the Government, Chief Judge Clark did not pull his two-hour figure out of the air.

Third. In opposing certiorari in this Court in *South Park Independent School District* v. *United States*, No. 82-2014, *cert. denied* October 3, 1983, the Government emphasized (Br. Op. 5, 7-8) that the district court excluded grades K-3 from its desegregation plan because (Br. Op. 7a):

> "It is constitutionally permissible for the Court to allow children in grades K through three to remain in neighborhood schools."[2]

And as recently as August 11, 1983, the Fifth Circuit affirmed a desegregation plan for Dallas that exempted children in grades K-3 from bus rides longer than 30 minutes. *See Tasby* v. *Wright*, 520 F.Supp. 683, 714-733 (N.D. Tex. 1981), *aff'd* No. 82-1121 (5th Cir. 1983). Yet the panel majority in the instant case says (Pet. App. 12a):

> "This constitutionally erected barrier to the operation of segregated schools applies to all children within the school system, including those in elementary grades."

Plainly the law is being unequally applied in these cases, and lower courts are sorely in need of guidance from this Court

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[2] Citing *Stout* v. *Jefferson County Board of Education*, 537 F. 2d 800 (5th Cir. 1976); *Carr* v. *Montgomery County Board of Education*, 377 F.Supp. 1123 (M.D. Ala. 1974), *aff'd* 511 F.2d 1374 (5th Cir. 1975), *cert. denied* 423 U.S. 986 (1975); *Swann* v. *Board of Education*, 402 U.S. 1, 26, 31 (1971); *Lee* v. *Macon County Board of Education*, 616 F.2d 805, 812 (5th Cir. 1980). These are the very same cases we rely on in urging this Court to grant certiorari in the instant case. See especially No. 83-129 Pet. 28-30.

regarding the proper interpretation of *Swann*, particularly as it affects children of tender years.

Fourth. The Solicitor General says (Br. Op. 7) this case "presents no novel legal issues." We disagree. No federal court has ever closed a perfectly good school, much less a rural community's only school, as a remedy in a desegregation case. And the district court acted alone in this case, wholly outside the submissions of the parties. There is in this case, we respectfully submit, a question of remedial authority worthy of a hearing in the Nation's last resort of equal justice under law.[3]

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[3] This Court has already agreed to hear *Memphis Fire Department* v. *Stotts*, No. 82-229, and its companion *Firefighters Local Union* v. *Stotts*, No. 82-209, which also raise troubling questions regarding the scope of federal judicial authority in an analogous context. See Brief of Petitioners, *Memphis Fire Department, et al.*, v. *Stotts*, No. 82-229, especially at 36-38.

CONCLUSION

For the above additional reasons, it is respectfully submitted that the petitions for a writ of certiorari should be granted.

Respectfully submitted,

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